

Exhibit F

KENNETH P. ACHTYL, JR.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NICHOLAS H. BELSITO,

Plaintiff,

-vs-

COUNTY OF ERIE,
SHERIFF TIMOTHY B. HOWARD,
KENNETH P. ACHTYL,
JAMES W. FLOWERS,

Defendants.

Remote Examination Before
Trial of KENNETH P. ACHTYL, JR., Defendant, taken pursuant
to the Federal Rules of Civil Procedure, at SUE ANN SIMONIN
COURT REPORTING, 421 Franklin Street, Buffalo, New York,
taken on April 14, 2021, commencing at 12:35 P.M., before
SUE ANN SIMONIN, Notary Public.

INDEX TO EXHIBITS

Exhibits		For Identification
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1	Administration General Order A-5 dated June 1, 2016	6
2	Administration General Order A-1 dated June 1, 2016	6
3	Administration General Order A-36 dated July 1, 2015	6
4	Training General Order T-2 dated June 1, 2016	6
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69	14	Did you ever walk down a street with an open container of beer yourself?
124	20	Do you recall how much it was?
281	4	Has the County advised you whether they will cover you for punitive damages if a punitive verdict is rendered?
281	9	Are you aware that you have no insurance coverage for punitive damages?
282	6	Are you aware that if a jury returns a punitive award against you, that the money will have to be paid by you personally?

1 APPEARANCES:

2 GIBSON, McASKILL & CROSBY, LLP,
3 By AARON F. GLAZER, ESQ.,
4 69 Delaware Avenue,
Suite 900,
Buffalo, New York 14202,
Appearing for the Plaintiff.

5 BLOOM & BLOOM, P.C.,
6 By KEVIN D. BLOOM, ESQ.,
7 530 Blooming Grove Turnpike,
New Windsor, New York 12553,
Appearing for the Plaintiff.

8 GOLDBERG SEGALLA, LLP,
9 By ALBERT J. D'AQUINO, ESQ.,
10 665 Main Street,
Buffalo, New York 14203,
Appearing for the Defendants.

11 PRESENT: Nicholas Belsito (until page 114)
12 Joseph Belsito (with Kevin Bloom, Esq.)
13 David Parrotta, videographer
14

15 (The following stipulations were entered
16 into by both parties.)

17 It is hereby stipulated by and between counsel
18 for the respective parties that the oath of the
19 Referee is waived, that filing and certification
20 of the transcript are waived, and that all
21 objections, except as to the form of the
22 questions, are reserved until the time of trial.
23

1 (An Administration General Order A-5 dated
2 June 1, 2016 was received and marked as Exhibit 1,
3 an Administration General Order A-1 dated
4 June 1, 2016 was received and marked as Exhibit 2,
5 an Administration General Order A-36 dated
6 July 1, 2015 was received and marked as Exhibit 3,
7 a Training General Order T-2 dated June 1,
8 2016 was received and marked as Exhibit 4,
9 an Administration General Order A-42 dated
10 March 14, 2018 was received and marked as
11 Exhibit 5,
12 an Operations General Order O-47 dated June
13 1, 2016 was received and marked as Exhibit 6,
14 twelve Information/Complaint Documents were
15 received and marked as Exhibit 7,
16 a Certificate of Disposition was received
17 and marked as Exhibit 8,
18 ten Misdemeanor Complaint Documents were
19 received and marked as Exhibit 9,
20 an Update Employment - Acadis Portal
21 Printout was received and marked as Exhibit 10,
22 and Body Camera Footage of Arrest of
23 Nicholas Belsito by Erie County Sheriff's Office

1 was received and marked as Exhibit 11, for
2 identification.)

3
4 THE VIDEOGRAPHER: It is twelve-thirty-five p.m.
5 Today is Wednesday, April 14th, 2021. I am David
6 Parrotta of Parrotta Studio, located at 350
7 Merchants Road in Rochester, New York. We are
8 conducting this deposition via videoconference.

9 We are about to begin the video recorded
10 deposition of Kenneth P. Achtyl in the matter of
11 Nicholas H. Belsito, Plaintiff, against County of
12 Erie, Sheriff Timothy B. Howard, Kenneth P.
13 Achtyl and James W. Flowers, Defendants. In
14 attendance is the court reporter, Sue Ann Simonin
15 of Sue Ann Simonin Court Reporting, located at
16 421 Franklin Street in Buffalo, New York.

17 At this time the attorneys will identify
18 themselves and the parties they represent, after
19 which our court reporter will swear in the
20 witness and we may proceed.

21 MR. GLAZER: Aaron F. Glazer, Gibson, McAskill and
22 Crosby, for the Plaintiff.

23 MR. D'AQUINO: Albert D'Aquino, Goldberg Segalla, for

1 Defendants.

2 MR. BLOOM: Kevin Bloom, Bloom and Bloom P.C., on
3 behalf of the Plaintiff.

4 MR. D'AQUINO: We'd like thirty days for Mr. Achtyl
5 to be able to read and sign his deposition.

6 THE REPORTER: Do all parties involved agree to this
7 deposition being conducted by remote video and to
8 the witness being sworn in remotely?

9 MR. GLAZER: Yes.

10 MR. D'AQUINO: Yes. Our magistrate judge indicated
11 that it should be conducted by video, so that's
12 probably the best way to characterize it.

13 Sue Ann, before you do that, I just want to
14 ask on the record and have it on the record, all
15 of the appearances that were just stated, did you
16 type that down?

17 THE REPORTER: So I have Nick Belsito present, with
18 Mr. Bloom is Joseph Belsito.

19 MR. D'AQUINO: Right. I just want to make sure that
20 is going to be on the transcript.

21 THE REPORTER: Yes. I was going to put those in the
22 transcript, yes.

23 MR. D'AQUINO: Okay. I only ask because I wasn't

1 sure if that was notes you were making. I just
2 wanted to ensure that it reflects it on the
3 transcript.

4 THE REPORTER: Yes, I will put that in the transcript.

5 MR. D'AQUINO: Last question, for the videographer.

6 I would like it stated on the record what is
7 going to be on the video that is being taken. Is
8 it just the screen with Mr. Achtyl or is it
9 anything else?

10 THE VIDEOGRAPHER: No. It is just Mr. Achtyl, with
11 the time and date added. That's all that will be
12 recorded.

13 MR. D'AQUINO: Okay. So when we go on -- did you put
14 that on, Sue Ann?

15 THE REPORTER: Yes.

16 MR. D'AQUINO: Great. Sorry to interrupt. Go ahead.

17

18 K E N N E T H P. A C H T Y L, J R.,
19 5438 George Drive, Hamburg, New York, 14075,
20 after being duly called and sworn,
21 testified via videoconference as follows:

22

23 EXAMINATION BY MR. GLAZER:

1 Q. Good afternoon, Mr. Achtyl. My name is Aaron
2 Glazer, I'm one of the attorneys that represents
3 Mr. Belsito with regard to a December the 3rd of
4 2017 incident at New Era Field. I have some
5 questions for you regarding that incident.
6 Accept my apology in advance, I may not always
7 look at you, I'll be taking notes at the same
8 time as we're having our question and answer.

9 I do have some requests for you that I
10 assume Mr. D'Aquino has gone over prior to this
11 conversation. The first is to please allow me to
12 ask my full question, to get all the words out of
13 my mouth before you start to answer. Miss
14 Simonin, who is on top of you on the screen
15 there, will not be able to take us both down at
16 the same time. You may anticipate questions that
17 I'm going to ask, you may start to answer in the
18 middle of a question. That's going to be a
19 problem, so just let me get all the words out of
20 my mouth before you start to answer. In that
21 regard, please give verbal responses like yes,
22 no, I don't know or whatever else you think might
23 be an appropriate answer to the question.

1 Shoulder shrugs, head nods, uh-huhs and uh-uhs
2 don't translate onto the record. So if you say
3 uh-huh or uh-uh, someone in here is probably
4 going to say Mr. Achtyl, was that a yes, was that
5 a no, et cetera.

6 Is that all clear so far?

7 A. Yes. Good afternoon, Mr. Glazer. That is clear.

8 Q. Thank you. I'm going to start with some
9 background questions, probably some questions
10 about your employment, and I'll move on at some
11 point to the incident in question. I may follow
12 up after that with some questions, but as long as
13 you abide by what we just discussed, I think that
14 this will go efficiently and seamlessly.

15 So I'll start by asking you where you are
16 right now.

17 A. I am currently located at my residence, which I
18 stated the address earlier, specifically sitting
19 in my dining room.

20 Q. Do you have any documents in front of you right
21 now?

22 A. I do not, no.

23 Q. Do you have a cell phone with you?

1 A. I do have a cell phone next to me, yes.

2 Q. Okay. Can you turn that cell phone off for us?

3 A. Yes.

4 Q. Thank you.

5 A. Yes.

6 Q. Are you using any other device, electronic or
7 otherwise, to communicate with anyone else while
8 you are answering these questions?

9 A. No.

10 Q. Do you own the home that you live in?

11 A. Yes, I do.

12 Q. And whom do you live there with?

13 A. My fiancée and --

14 Q. What's her --

15 A. Elizabeth Ferreri.

16 Q. What's your fiancée's name?

17 A. Elizabeth R. Ferreri.

18 Q. You started to say and, and I interrupted you,
19 which is what I asked you not to do, so I
20 apologize for that.

21 Is there someone else living in the home?

22 A. Yes. My daughter resides with me part-time,
23 between here and her mom's house.

1 Q. What's her mom's name?

2 A. Elizabeth -- I'm sorry. Lisa, and I'm not sure
3 of her -- Daoust is her married name.

4 Q. Could you spell that for Miss Simonin?

5 A. I believe the last name is spelled D-A-U-S-T
6 (sic).

7 Q. Are you divorced from Miss Daoust?

8 A. Yes. She is remarried.

9 Q. Okay. When were you divorced?

10 A. 2010, August of 2010.

11 MR. D'AQUINO: Mr. Glazer, I'm sorry to interrupt. I
12 apologize. I should have asked this question
13 earlier. I just want to confirm on the record
14 that the only person who is videotaping or
15 audiotaping this deposition is our videographer.
16 Is everyone on this call in agreement that no one
17 else is audiotaping or videotaping this?

18 MR. GLAZER: Confirmed.

19 THE REPORTER: Al, I also have it recording just on
20 the Zoom, but it is just Mr. Achtyl's face and it
21 is just as a backup.

22 MR. D'AQUINO: Okay. So the only two recordings are
23 yours, Sue Ann, and our videographer. Thank you.

1 Sorry to interrupt, Mr. Glazer.

2 MR. GLAZER: No problem.

3 BY MR. GLAZER:

4 Q. You indicated, Mr. Achtyl, that you were divorced
5 from Miss Daoust in August of 2010, is that
6 correct?

7 A. That is correct.

8 Q. Have you ever given sworn testimony before today?

9 A. Yes, I have.

10 Q. Is that in the context of your prior employment
11 in law enforcement?

12 A. Yes.

13 Q. Okay. Can you describe for me how many times
14 over the course of the last twenty years you've
15 given sworn testimony?

16 A. I'm not sure of an exact number. I would say
17 probably hundreds, if not more than hundreds of
18 times.

19 Q. All right. We'll talk about this a bit more
20 later, but were you primarily a patrol deputy
21 during your time with the sheriff's department?

22 A. I held some different titles, but yes, mainly I
23 was a patrol deputy with the sheriff's office.

1 Q. Okay. So having experience in the DA's office
2 myself, can I assume that most of the times that
3 you gave sworn testimony it would be in the
4 course of DWI's or misdemeanor offenses and
5 things like that?

6 A. Yes, for the most part.

7 Q. Okay. What else?

8 A. I have testified at various felony trials.

9 Q. Do you know when the last time you gave testimony
10 in a felony trial was?

11 A. I am not certain.

12 Q. Was it in the last five years?

13 A. I would say yes, in the last five years.

14 Q. Did you review any documents in preparation for
15 your testimony today?

16 A. Only the exhibits this morning that were
17 forwarded to me by the attorney.

18 Q. When you say the attorney, do you mean Mr.
19 D'Aquino?

20 A. Mr. D'Aquino, yes.

21 Q. Have you reviewed any other documents other than
22 those that were forwarded to you this morning?

23 A. No, I have not.

1 Q. Have you reviewed the footage of Officer Flowers'
2 body camera from 12/3 of '17?

3 A. Have I reviewed it?

4 Q. Have you watched it?

5 A. Yes, I've watched it. I saw parts of it during
6 my trial --

7 Q. Okay.

8 A. -- my criminal trial, and --

9 Q. Have you watched -- go ahead. I'm sorry. Go
10 ahead.

11 A. And that's when I saw the video of that, during
12 my criminal trial, and obviously prior to my
13 criminal trial with my defense attorney.

14 Q. You're speaking about Mr. Personius?

15 A. Correct.

16 Q. I don't want to know about any communication that
17 you had with your attorneys, but I will ask you
18 how many times you and Mr. Personius reviewed
19 that body cam footage.

20 A. From what I recall, it was -- we reviewed it one
21 time in full.

22 Q. All right. And since then have you reviewed it
23 again in full?

1 A. No, I have not.

2 Q. So we've established that you looked at the
3 exhibits that were forwarded today, we've
4 established that you watched the body cam
5 footage. Have you reviewed anything else in
6 preparation for your testimony today?

7 A. No, I have not.

8 MR. D'AQUINO: Let me just object to that. I think
9 he made a distinction that he last reviewed the
10 body cam footage at his trial, not in preparation
11 for this deposition.

12 BY MR. GLAZER:

13 Q. Okay. Let me just ask, when is the last time you
14 watched any portion of the body cam footage?

15 A. It would be the week of my trial in September of
16 2019.

17 Q. Are you the Defendant in any other lawsuit that's
18 pending right now other than this one?

19 A. Not that I'm aware of.

20 Q. Have you ever brought a lawsuit as a Plaintiff?

21 A. Yes, I have.

22 Q. When was that?

23 A. I believe the year was 2011.

1 Q. What was that lawsuit regarding?

2 A. It was resulting -- leaving the New Era Field or
3 the stadium, and I was rear-ended by a drunk
4 driver in my personal vehicle while on County
5 time.

6 Q. Okay. Have you ever been a Plaintiff in another
7 personal injury lawsuit other than that one?

8 A. No, I have not.

9 Q. Is that lawsuit that you're referring to when you
10 were rear-ended by Mr. Kelly, does that ring a
11 bell?

12 A. I believe his name was Mr. Kelly, yes.

13 Q. And if I told you that was 2014, would you have
14 reason to disagree with that?

15 A. My memory, I believe it was, from what I can
16 recall, I believe it was 2011, but I'm not sure.
17 It could be 2014.

18 Q. I'm asking a bad question, let me be more clear.
19 Was the lawsuit brought in 2014?

20 A. I'm not sure when the lawsuit was brought. The
21 incident occurred in 2011.

22 Q. Okay. Can you give me your date of birth?

23 A. [REDACTED]

1 Q. And that makes you how old today?

2 A. Forty-eight.

3 Q. Where were you born?

4 A. Buffalo, New York.

5 Q. Did you attend high school?

6 A. Yes, I did.

7 Q. Whereabouts?

8 A. I graduated from Eden Central High School, Eden,
9 New York.

10 Q. What year?

11 A. 1991.

12 Q. Do you have any education post high school?

13 A. Yes, I do.

14 Q. Can you describe it for me, please?

15 A. I completed a two-year Associate's degree at Erie
16 Community College, it was from the fall of 1991,
17 August I believe of 1991, to -- I believe it
18 would be December of 1994.

19 Q. Any education or courses beyond that?

20 A. Yes. In 1995, in April of -- excuse me. In
21 April of -- let me correct myself. I'm sorry. I
22 would have started the police academy in April of
23 1994, so in December or January of 1995 I would

1 have finished ECC.

2 Q. I appreciate that answer. Let me just tell you
3 this. You're giving me these dates from
4 twenty-some-odd years ago, and I appreciate that.
5 I just want you to know that I'm not here to take
6 you to task over things that happened twenty-five
7 years ago or dates, and I'm not here to try to
8 jam you up on that stuff. But to the extent that
9 you do remember these dates, I appreciate it.

10 A. You're welcome.

11 Q. Have you ever been known by a name other than
12 Kenneth Achtyl?

13 A. I would be -- have been called Kenny or Ken, I
14 guess the shortened version of Kenneth, but no
15 other names other than that.

16 Q. All right. You haven't changed your name for any
17 reason?

18 A. No, I have not.

19 Q. Is your middle name Paul?

20 A. Yes, my middle name is Paul.

21 Q. How tall are you?

22 A. I am approximately five seven to five eight.

23 Q. How much do you weigh?

1 A. Approximately two hundred and twenty-five pounds.

2 Q. Do you have any nicknames?

3 A. Not that I'm aware of, aside from my deceased
4 grandfather when I was a kid used to call me
5 Bummer, but that -- you know, I haven't been
6 called that in probably over twenty-five years.

7 Q. Do you have any nicknames that you're aware of
8 within the sheriff's department?

9 A. No, I do not.

10 Q. Other than the convictions of January the 23rd of
11 2020, which we'll get into later, have you ever
12 previously been convicted of a felony or a
13 misdemeanor?

14 A. No, I have not.

15 Q. We talked about some dates regarding your
16 education, and then I think you said in April of
17 '94 you went to the police academy. So I'm just
18 going to ask you, when you went into the police
19 academy, what was the first job that you took
20 after that?

21 A. I would have completed the police academy in
22 January of '95, and the first police job that I
23 took after the academy would have been in January

1 of '95 with the Village of Gowanda, New York
2 Police Department as a part-time police officer.

3 Q. What does a part-time police officer in Gowanda
4 do?

5 A. General patrol work.

6 Q. How long did you work for Gowanda?

7 A. Gowanda, I worked probably on and off up to
8 roughly -- I'm going to say around 2005, 2006.

9 Q. Did you work anywhere else while you were working
10 for Gowanda?

11 A. In 1997 I was hired part-time for the City of
12 Salamanca as a part-time police officer. I -- at
13 that time when I was working part-time for the
14 Village of Gowanda and for the -- and to include
15 the City of Salamanca time, I also worked for
16 HSBC Bank in a full-time position as a security
17 council operator.

18 Q. Can you give me the approximate dates of
19 employment for HSBC?

20 A. 1992 to 1997 or '98.

21 Q. So was there a time that you were working for
22 Gowanda, Salamanca and HSBC at the same time?

23 A. Yes.

1 Q. When did you cease to work for Salamanca?

2 A. Salamanca, I worked for Salamanca for six months.
3 I was then offered a full-time position with the
4 City of Salamanca, at which time I declined the
5 full-time offer because I did not want to
6 relocate due to my current wife's position at the
7 time, so I unfortunately gave that position up
8 and stayed with HSBC Bank.

9 Q. Okay. So then at that point you would have been
10 working for Gowanda and HSBC, is that correct?

11 A. That's correct.

12 Q. Okay. You ceased to work for HSBC in '97 as
13 well, is that correct?

14 A. It was '97 or '98 when I was offered a full-time
15 position with the Niagara Frontier Transit
16 Authority Police Department.

17 Q. And you accepted?

18 A. Correct. And around that time I was also offered
19 a part-time position with the Village of Arcade
20 Police Department.

21 Q. And did you accept that?

22 A. Yes.

23 Q. So then was there a time when you were working

1 for the NFTA, Arcade and Gowanda at the same
2 time?

3 A. Correct.

4 Q. Okay.

5 A. And I can also add one more to that. Somewhere
6 in that time frame I also continued as a
7 volunteer reserve with the Town of Eden Police
8 Department. And then some point in time around
9 '96 or '97 I was offered a part-time position to
10 fill in as needed on their schedule as well.

11 Q. For whom was that?

12 A. The Town of Eden Police Department.

13 Q. So can you just tell me how you ceased to be
14 employed by each of those entities up until the
15 time that you stopped working for Gowanda in
16 2006?

17 A. Well, the part-time positions were sometime once
18 a week, sometimes it was once a month, sometimes
19 it was as needed based upon availability. Some
20 of the positions -- like Salamanca was mainly
21 like weekends and maybe once or twice during the
22 week in the afternoon or evening hours. It was
23 just based upon my schedule and availability with

1 my full-time job at that time.

2 Q. So as of 2006 when you ceased to work for
3 Gowanda, whom were you working for?

4 A. The Erie County Sheriff's Office.

5 Q. So is that when you started with the sheriff?

6 A. Started with the sheriff's office in June of
7 2000.

8 Q. What did I miss? How did we get from the
9 sheriff's department after Gowanda to June of
10 2000? Did you start some sort of part-time
11 employment with the sheriff in 2000?

12 A. No. I worked full-time for the sheriff's office
13 in 2000. Prior to that, as I stated earlier, I
14 worked for the Niagara Frontier Transit Authority
15 Police Department, I believe it was from
16 somewhere in 1997 or '98, I believe it was '98,
17 until I was hired full-time in June of 2000 with
18 the sheriff's office.

19 Q. All right. So were you working for the sheriff's
20 office and the Gowanda Police at the same time?

21 A. Yes.

22 Q. All right. And then in 2006, obviously you were
23 still working for the sheriff's department?

1 A. Correct.

2 Q. And then you ceased to be employed at that time
3 with Gowanda?

4 A. Correct.

5 Q. Refresh my recollection. What was the reason for
6 that?

7 A. Family related issues. I wouldn't say issues.
8 Family related; two kids, a lot of time away from
9 -- a lot of additional time away from the family
10 when the kids were young. So at that point in
11 time I felt financially secure with the sheriff's
12 office to not have a part-time job.

13 Q. So from 2006 on, you worked only for the Erie
14 County Sheriff?

15 A. Correct.

16 Q. Do you have any social media accounts?

17 A. Yes, I do.

18 Q. What accounts do you have?

19 A. I have a Facebook account and an Instagram
20 account.

21 Q. What's the Facebook name that you use?

22 A. Kenneth Paul.

23 Q. What about Instagram?

1 A. I am not sure how Instagram really works. I do
2 have an account. I'm not sure exactly what the
3 -- if it's like Facebook or not, if it's Kenneth
4 Paul, I honestly couldn't tell you.

5 MR. GLAZER: Sue Ann, can you create an index for
6 requests?

7 THE REPORTER: Yes.

8 MR. GLAZER: Thank you. And can you put number one
9 as Instagram screen name information.

10 THE REPORTER: Yes.

11 MR. GLAZER: Thank you.

12 BY MR. GLAZER:

13 Q. Other than Facebook and Instagram, do you have
14 any other social media accounts?

15 A. I do not.

16 MR. D'AQUINO: Mr. Glazer, sorry to interrupt. Just
17 for the record, so I don't have to say it any
18 more than one time, I will just reserve any
19 objections to requests for other information, or
20 what sound like requests for other information,
21 until I receive them in writing from you as part
22 of a discovery demand. Just wanted to note that
23 on the record. Sorry to interrupt.

1 MR. GLAZER: No problem. I understand that. And the
2 only reason I do this is because if I don't, I
3 forget. This is for my own information. And
4 whatever we need to send to you, we'll send in
5 writing and we'll expect you to respond or not.
6 That's up to you.

7 BY MR. GLAZER:

8 Q. Mr. Achtyl, have you ever posted profanities on
9 any of your social media accounts?

10 A. Not that I'm aware of.

11 Q. Have you made racist comments on your social
12 media accounts?

13 A. Not that I'm aware of.

14 Q. Have you deleted any posts since the date of this
15 incident on any social media account?

16 A. I have deleted posts, but not related to this
17 incident.

18 Q. Why did you delete the posts?

19 A. No specific reason.

20 Q. Was it because they had racist content?

21 A. No, not because it was racist content. I'm not a
22 racist person.

23 Q. That wasn't my question. My question was, did

1 you delete any posts because it had racist
2 content?

3 A. No, I did not.

4 Q. Did you delete any posts because it was laced
5 with profanity?

6 A. No, I did not.

7 Q. Have you ever posted the following? Quote, were
8 you at one of those rallies where you have to
9 lick the shoes of black people for repatriations?

10 A. Not that I'm aware of.

11 Q. Okay. Is your screen name Kenneth Paul on
12 Facebook, as you told me about two minutes ago?

13 A. Yes.

14 Q. And at some point did you have your profile
15 picture as a snake with a don't tread on me
16 indication underneath it?

17 A. I did, yes.

18 Q. Okay. And if I told you that that same Kenneth
19 Paul posted, quote, were you at one of those
20 rallies where you have to lick the shoes of black
21 people for repatriations, would you have reason
22 to disagree that that was posted on your account?

23 A. I am not sure. I don't recall posting it.

1 Q. Does anyone else have access to your Facebook
2 account?

3 A. Not that I'm aware of.

4 Q. Can we still find the post that I just mentioned
5 on your social media?

6 A. I'm not sure.

7 Q. I can tell you when it was.

8 June 11th, 2020. Did you delete anything
9 from your Facebook page from June 11th of 2020?

10 A. Not that I'm aware of.

11 Q. Does the sheriff's department have a social media
12 policy?

13 A. I believe they do.

14 Q. Does that policy encourage the use of profanity
15 online?

16 A. Not when it's related to speaking of the
17 sheriff's office, no.

18 Q. Is there a policy in the sheriff's department
19 that says that you're a sheriff twenty-four hours
20 a day, seven days a week?

21 A. I believe there is, but it doesn't infringe upon
22 your opinion when it comes to social media.

23 Q. Does it infringe upon your opinion or right to

1 post racist ideologies on social media?

2 MR. D'AQUINO: Object to the form.

3 BY MR. GLAZER:

4 Q. You can answer if you understand the question.

5 A. Can you repeat that, please?

6 Q. I can ask it a different way. Do you think the
7 sheriff would support a member of the Erie County
8 Sheriff's Department posting racist ideologies on
9 their social media profile?

10 A. I'm kind of confused by your question. If the
11 comment was made in 2020, I'm no longer a member
12 of the Erie County Sheriff's Office.

13 Q. Just listen to the question and answer the best
14 you can. Do you think, when you were a sheriff,
15 that the sheriff would have condoned the posting
16 of racist ideologies on your social media?

17 MR. D'AQUINO: Object to the form.

18 THE WITNESS: Repeat it?

19 BY MR. GLAZER:

20 Q. Is the sheriff a racist?

21 A. No, I don't believe the sheriff is a racist, nor
22 am I.

23 MR. D'AQUINO: Object to the form. Sorry, Mr.

1 Glazer. What does this have to do with the
2 complaint that you filed, with respect to race?

3 MR. GLAZER: Well, with regard to the question, if
4 you're objecting to the form, I guess it's noted
5 for the record.

6 MR. D'AQUINO: I'm objecting on the basis that this
7 sounds like harassment of the witness with an
8 issue that is not within the four corners of your
9 complaint.

10 MR. GLAZER: Okay. Well, I'm going to continue to
11 ask the questions unless you want to call the
12 judge.

13 MR. D'AQUINO: We may get to that point. What's your
14 pending question?

15 MR. GLAZER: My question is, is the sheriff a racist?

16 MR. D'AQUINO: Okay. That's an opinion question. I
17 do object to that. I don't know why you would be
18 asking him that question in this case. We should
19 just call the judge if those are going to be the
20 tenor of the questions.

21 MR. GLAZER: I have a few more questions, but I'm
22 happy to call the judge if you'd like to do that.
23 So I'll ask my few more questions and then I

1 guess we'll get to whether or not you want to
2 call the judge.

3 BY MR. GLAZER:

4 Q. Do you believe the sheriff is a racist?

5 MR. D'AQUINO: Same objection and same direction not
6 to answer. We'll put that on the list for
7 calling the judge.

8 MR. GLAZER: Okay.

9 MR. D'AQUINO: If you have others in this vein, maybe
10 we should just call the judge.

11 MR. GLAZER: Well, I'm going to ask him further about
12 his social media. So if you think that's an
13 issue you want to talk to the judge about, we can
14 do that.

15 MR. D'AQUINO: Right now I'm just asking you about
16 you asking him opinion questions about whether
17 other people are racists.

18 MR. GLAZER: Okay. Well, the other person is a party
19 and the other person is somebody that obviously
20 he's had contact with and he's conceded that
21 there is a policy. So yes, I am going to ask the
22 questions, but I think it's not going to go on
23 that much longer, so it may be a waste of time to

1 call the judge, but I've got nothing but time.

2 So if you want to do that, it's okay with me.

3 MR. D'AQUINO: Ask your questions, I'll make
4 directions, and then I guess we can determine at
5 that point whether you want to call the judge
6 since I'm objecting.

7 MR. GLAZER: I'll just reserve my right to recall the
8 witness if I don't get the answers to my
9 questions.

10 MR. D'AQUINO: Well, about recalling the witness,
11 that's why I'm saying we're going to call the
12 judge, so we don't have to do that.

13 MR. GLAZER: Okay. Well, I'm not at the point right
14 now where I think it's necessary, but I guess you
15 and I will have a conversation if it continues.

16 MR. D'AQUINO: Yeah. My suggestion is, you know, ask
17 whatever questions, and then when you have the
18 questions that I'm directing him not to answer
19 to, if you want to call the judge, let's do so,
20 so that there won't have to be a continuation at
21 a different time, since the judge offered to take
22 calls.

23 BY MR. GLAZER:

1 Q. Mr. Achtyl, do you feel that it's okay for you to
2 post racist ideologies online now that you're no
3 longer a sheriff?

4 A. I post my opinion. I don't believe it's a racist
5 comment in the contents of the post that was
6 made.

7 Q. So now you do remember the post?

8 A. From now that you've brought it up and in the
9 general sense of the post, I believe I remember
10 what you're referring to, yes.

11 Q. I'll ask you again just so we can be clear. Do
12 you now recall posting, quote, were you at one of
13 those rallies where you have to lick the shoes of
14 black people for repatriations? Is that what you
15 posted?

16 A. I believe so, yes.

17 Q. You started working, again, for the sheriff's
18 department in June of 2000, is that right?

19 A. I started my employment with the sheriff's office
20 in June of 2000.

21 Q. Who was the sheriff when you started?

22 A. Patrick Gallivan.

23 Q. Who was the undersheriff?

1 A. Tim Howard.

2 Q. Did you know Patrick Gallivan personally before
3 you started?

4 A. I did not, no.

5 Q. Did you know Tim Howard personally before you
6 started?

7 A. I did not, no.

8 Q. Was there an interview process in connection with
9 your hiring at the sheriff's department?

10 A. Yes, there was.

11 Q. What did that entail?

12 A. From what I recall, I believe it was -- the
13 process took approximately anywhere from nine to
14 twelve months, background check. I believe there
15 was an interview, I'm not sure, I don't remember
16 who it was with. And that's pretty much what I
17 can recall of the hiring process.

18 Q. Were you provided with any sort of written
19 handbook or other written materials when you
20 started in June of 2000?

21 A. Yes.

22 Q. What materials were you provided with?

23 A. Policy and procedure manual.

1 Q. And did you have to sign any of those documents
2 to indicate that you had reviewed them?

3 A. Yes.

4 Q. Did you do that?

5 A. Yes.

6 Q. Do you know what a general order is?

7 A. I do, yes.

8 Q. Could you tell me what it is, please?

9 A. It is a general -- or, a directive to follow a
10 certain rule, which could be permanent or it
11 could be for a period of time.

12 Q. All right. I'm going to pull up an exhibit and
13 I'm going to ask you some questions while the
14 exhibit is up.

15 Are you able to see the document up on the
16 screen, Mr. Achtyl?

17 A. I see a part of it, yes.

18 Q. And at the top of the document, is it referenced
19 as Exhibit 1 on the right-hand corner?

20 A. I do see part of that yellow tag; however, the
21 cameras are covering the rest of that document.

22 Q. I understand that, but can you see the top half
23 of the first page of this document?

1 A. The top half, yes.

2 Q. And is this document titled administration
3 general order A dash five?

4 A. Yes.

5 Q. I'm going to scroll down to page four. I suppose
6 I should ask you first, is the subject of this
7 document written orders, bulletins and memoranda?

8 A. Yes.

9 Q. I'm going to go down to page four of this
10 document. Do you see where it says procedures?

11 A. Yes.

12 Q. I'll scroll down a little further. I was
13 actually on page three. Excuse me.

14 Now, do you see at the top of the screen on
15 page four, it's indicated by number three and it
16 says distribution and retention of written orders
17 and bulletins?

18 A. Yes.

19 Q. All right. Do you see where it says general
20 orders?

21 A. I do.

22 Q. It says general orders will be issued to all
23 members.

1 Is that a fair statement as to your
2 understanding of what happens to general orders?

3 A. Yes.

4 Q. Okay. And then the document indicates that the
5 members will acknowledge receipt, initial the
6 receipt log and return the log to their
7 supervisor who, in turn, will submit the receipt
8 log to the administrative services division or as
9 otherwise directed by the sheriff or the
10 undersheriff.

11 Does that sentence reflect your
12 understanding of what's supposed to happen after
13 you review these general orders?

14 A. Yes.

15 Q. Okay. So would it be fair to say that from time
16 to time general orders are provided to the
17 membership of the Erie County Sheriff's
18 Department and it is incumbent upon the deputy
19 sheriffs to review those materials and those
20 orders?

21 A. Yes.

22 Q. And during the time that you were employed with
23 the Erie County Sheriff's Department, do you

1 recall receiving general orders and reviewing
2 those orders as you were required to do?

3 A. Yes.

4 Q. And do you recall initialing the order and then
5 giving it back to your supervisor or whomever the
6 appropriate person was?

7 A. I believe so, yes. I'm not sure exactly how the
8 process was handled because at some point it went
9 from being a paper handbook to where everything
10 was done online.

11 Q. Okay. Are you familiar with the mission
12 statement of the Erie County Sheriff's
13 Department?

14 A. Yes.

15 Q. What's the mission statement?

16 A. I can't -- I could not recite it off the top of
17 my head. I'm familiar with it.

18 Q. Can you tell us in general what it says?

19 A. I'm not, I'm not sure. I'm not going to
20 speculate.

21 Q. Do you know what the general mission of the Erie
22 County Sheriff's Department is?

23 A. Honestly, not at this time, no, I don't.

1 Q. All right. Well, you worked there for twenty-one
2 years, is that right?

3 A. That's correct.

4 Q. Okay. Is there anything that you can tell me
5 about the goals or the mission or the duties of
6 the Erie County Sheriff's Department?

7 A. There was words used I believe in that mission
8 statement, if I'm correct, of duty and honor and
9 I believe maybe integrity. I cannot word for
10 word tell you now what that mission statement
11 says.

12 Q. If I told you that the mission statement
13 indicates that only through the establishment,
14 maintenance and enforcement of a thorough set of
15 policies and procedures can any agency hope to
16 effectively obtain the objectives of prompt,
17 efficient, fair and equitable delivery of
18 professional public safety services to Erie
19 County, does that sound like what it might say?

20 A. I believe so, yes.

21 Q. Okay. And if I told you that the first line of
22 the mission statement was, quote, to provide
23 quality public safety services to our community

1 by promoting a safe environment through police
2 and citizen interaction, with an emphasis on
3 integrity, fairness and professionalism, does
4 that sound like what the mission statement says?

5 A. I believe it does. I mean, if I could see it and
6 read it, I probably could agree with you.

7 Q. Are you familiar with the Erie County Sheriff's
8 Department rules of conduct?

9 A. I am familiar that there are rules of conduct,
10 yes.

11 Q. Do you know what they are?

12 A. Not off the top of my head I do not.

13 Q. Were they provided to you in writing?

14 A. Yes.

15 Q. Can you tell me anything about what the rules of
16 conduct say?

17 MR. D'AQUINO: Object to the form. What is the
18 specific question, what do you want him to tell
19 you?

20 MR. GLAZER: I want to know if he knows one sentence
21 of the rules of conduct of the Erie County
22 Sheriff's Department.

23 THE WITNESS: At this time I cannot give you a

1 sentence from the rules of conduct of the
2 sheriff's office. It's been quite -- it's been a
3 few years since I've been there, so I don't know
4 what specific sentence you're looking for.

5 BY MR. GLAZER:

6 Q. I'm looking for any topic described by the rules
7 of conduct.

8 MR. D'AQUINO: That's a different question. Now he's
9 asking for a topic covered by the rules of
10 conduct from your recollection, since you don't
11 have the document to read.

12 BY MR. GLAZER:

13 Q. Do you recall any single topic from the rules of
14 conduct?

15 A. I do not recall anything from the -- that
16 document at this time.

17 Q. All right. Let me show you the document.

18 Are you able to see the document on your
19 screen?

20 A. Yes, aside from the portion that's just
21 obstructed due to the video windows.

22 Q. Can you see a document that has a right-sided
23 exhibit tab that says Exhibit number 3?

1 A. I can see the exhibit tag, yes.

2 Q. All right. That exhibit is up on your screen, is
3 that correct?

4 A. That is correct.

5 Q. The top of the document says administration
6 general order A dash 36, is that true?

7 A. That's correct.

8 Q. And the subject is rules of conduct, correct?

9 A. Correct.

10 Q. I'm going to ask you some questions about page
11 one, paragraph two. Page one, paragraph two,
12 starts with each and every employee, is that
13 correct?

14 A. Correct.

15 Q. Okay. Does it read that each and every employee
16 of the Erie County Sheriff's Office is a member
17 of a team which works together with a primary
18 objective of serving the residents of the County?

19 A. That's correct.

20 Q. So the primary function of a member of the
21 sheriff's department is serving the residents of
22 Erie County, is that correct?

23 A. That is correct.

1 Q. As a sheriff, are you required to be courteous to
2 the public?

3 A. Yes.

4 Q. Okay. Is there a specific guideline regarding
5 courtesy in the rules of conduct?

6 MR. D'AQUINO: Well, if you want him to comment on
7 that, I think you should allow him a chance to
8 read this fourteen-page document, of which he's
9 seen the top half of page one. So if you want to
10 take a break for him to read it if you want to
11 ask him about it.

12 MR. GLAZER: More power to you if that's what you
13 think, but it's my deposition, I'm going to ask
14 him how I see fit to ask him.

15 BY MR. GLAZER:

16 Q. So my question is -- I'll try to ask you a very
17 simple question. Do the rules of conduct contain
18 guidelines on being courteous to the public?

19 MR. D'AQUINO: Okay. So that's my objection, Mr.
20 Glazer. You're asking him about an exhibit you
21 noted on the record but he has not had a chance
22 to read.

23 MR. GLAZER: Okay. Well, he testified earlier that

1 he received the exhibits this morning and that he
2 reviewed the exhibits. I've asked him a
3 question, it's a fair question, it doesn't invoke
4 any privilege and it's certainly not palpably
5 improper. So are you going to direct him not to
6 answer it or are you going to allow him to answer
7 it?

8 MR. D'AQUINO: I'm not asking him not to answer. I'm
9 asking you to give him a chance to read it since
10 you're asking a specific question about the
11 content of the document but he hasn't had a
12 chance to read the document yet. Pretty routine
13 deposition approach.

14 MR. GLAZER: Again, he testified earlier that he did
15 receive the document this morning, it was one of
16 the exhibits. So I'm going to just ask my
17 question again. And if we have to call the
18 judge, we'll call him.

19 MR. D'AQUINO: Listen, Mr. Glazer. It's a
20 fourteen-page document, he got those exhibits
21 briefly before the deposition, because that's
22 when you gave them to me, probably an hour
23 before, and I moved them to him by e-mail. So I

1 don't think he's memorized this fourteen-page
2 document out of the other eleven exhibits that
3 you provided us with about an hour before the
4 deposition. All I'm asking is if you're going to
5 ask him does a document say such and such, let
6 him read the document.

7 MR. GLAZER: I'm not -- go ahead. I'm sorry.

8 MR. D'AQUINO: I'm done.

9 MR. GLAZER: I'm not asking him what it says.

10 MR. D'AQUINO: I thought that's exactly what the
11 question was.

12 MR. GLAZER: If I ask him what it says, I'll let him
13 see the document.

14 BY MR. GLAZER:

15 Q. All I want to know is, do the rules of conduct
16 contain directives on courtesy?

17 A. Yes.

18 MR. D'AQUINO: And that is exactly the question.

19 Does this document, Exhibit 3, refer to what you
20 just asked him. Let him read the document and he
21 can answer you. That's all I'm asking.

22 MR. GLAZER: And I'm saying no. The question stands.

23 MR. D'AQUINO: That's not fair at all.

1 MR. GLAZER: Well, the fact that you --

2 MR. D'AQUINO: You give him a document, an exhibit,
3 and say here it is but you can't read it, and now
4 answer and tell me if such and such is in it? We
5 don't do it that way.

6 MR. GLAZER: Was his yes on the record, Miss Simonin?

7 THE REPORTER: Yes.

8 MR. GLAZER: Okay. That's all I need. I can move on
9 now.

10 BY MR. GLAZER:

11 Q. Mr. Achtyl, are there directives in the rules of
12 conduct on how sheriffs are supposed to respond
13 to requests for information or advice from the
14 public?

15 A. Without looking at the document, I am not sure.

16 Q. You caught on there. So now I'm going to show
17 you the document.

18 A. Thank you.

19 MR. D'AQUINO: Excuse me. There's no need for
20 comments like you caught on there. And I think
21 you recognize that, so let's just knock that off
22 right now.

23 MR. GLAZER: You know what I also recognize, is that

1 I'm asking a fair question that could have been
2 answered with an easy answer. And you've
3 interrupted me now for about three minutes, so I
4 recognize that too. Now I'm going to show him
5 the document.

6 MR. D'AQUINO: I'm objecting to comments like you
7 caught on, and I ask that that be stricken from
8 the record.

9 BY MR. GLAZER:

10 Q. I'm showing you now, Deputy Achtyl -- or, excuse
11 me, Mr. Achtyl, Exhibit 3 for identification.
12 Again, I'm going to scroll down to paragraph
13 twenty-seven. Can you see paragraph twenty-seven
14 at the top of your screen?

15 A. Yes.

16 Q. Okay. Does that paragraph say when any person
17 requests assistance or advice, makes a complaint
18 or report, either in person or by telephone, all
19 pertinent information shall be obtained in a
20 courteous and official manner and shall be
21 properly and judiciously acted upon in a manner
22 consistent with official procedures? Is that
23 what it says?

1 A. That's what the document says.

2 Q. And that's part of the rules of conduct, is that
3 correct?

4 A. Yes.

5 Q. And you're bound by the rules of conduct when
6 you're an Erie County Sheriff, is that also
7 correct?

8 A. There are rules of conduct, yes.

9 Q. Okay. Let's scroll up to twenty-six. Do you see
10 twenty-six there, it says courtesy?

11 A. Yes.

12 Q. Does it say employees shall be courteous to the
13 public?

14 A. Yes.

15 Q. So as an Erie County Sheriff, you're supposed to
16 be courteous to the public, correct?

17 A. That's -- yes.

18 Q. It's one of your duties?

19 A. That's one of the rules of conduct, yes.

20 Q. Do you disagree with that, you shouldn't have to
21 be courteous to the public?

22 A. I would say it warrants the situation at hand.

23 Q. I don't understand what you mean by that. So

1 there's situations where if a citizen comes up
2 and asks you for information, you should be
3 discourteous?

4 MR. D'AQUINO: Object to the form.

5 THE WITNESS: I'm going to say in regards to my
6 answer that if a citizen comes running at you
7 with a shotgun yelling he's going to kill you, I
8 don't think I'm going to say sir, please put the
9 gun down and be courteous. I think that
10 situation dictates that rule of conduct.

11 BY MR. GLAZER:

12 Q. All right. Did I ask you anything about a man
13 running at you with a shotgun?

14 A. You asked me in regards to the question of rules
15 of conduct in regards to courtesy, and I
16 indicated that my understanding is that situation
17 dictates that.

18 Q. But did I ask you -- I'm sorry. Again, just so
19 that we're clear, and this is a pretty easy
20 question, did I ask you anything about a man with
21 a shotgun?

22 A. You did not. You asked me -- the question that I
23 believe you asked me, if it could be read back to

1 me or you could restate it, indicated if I -- I
2 believe the way you stated it was in regards to
3 courtesy and being courteous at all times.

4 Q. Okay. My next question is, does paragraph
5 twenty-six indicate that employees shall control
6 their tempers and exercise the utmost patience
7 and discretion? Does it say that?

8 A. It does say that, yes.

9 Q. You're bound by that sentence when you're a
10 member of the Erie County Sheriff's Department,
11 is that right?

12 A. I would say that is the rule of conduct that is
13 listed there.

14 Q. So that is yes?

15 A. The rule of conduct, that's what it says. It
16 says -- yes.

17 Q. Okay. The question is, if you're an Erie County
18 Sheriff, you're bound by that sentence, is that
19 correct?

20 A. Maybe if you could rephrase it in regards to
21 bound.

22 Q. Okay. Are you supposed to follow this direction
23 as an Erie County Sheriff?

1 A. In ideal situations, yes.

2 Q. And are you supposed to control your temper and
3 exercise the utmost patience and discretion and
4 not engage in argumentative discussions, even in
5 the face of extreme provocation? Is that a fair
6 reading of what it says in paragraph twenty-six?

7 A. Yes, that's what it says.

8 Q. Does it say in the performance of their duties,
9 employees shall not use coarse, violent, profane
10 or insolent languages -- language, rather, or
11 gestures and shall not express any prejudice
12 concerning race, religion, politics, national
13 origin, lifestyles or similar personal
14 characteristics? Did I read that properly?

15 A. Yes.

16 Q. Okay. Have you been provided with any training
17 materials from the Erie County Sheriff's
18 Department that I have not asked you about or
19 that we have not discussed?

20 A. Maybe if you could rephrase your question. I
21 have had a lot of --

22 Q. It's a bad question. It's a bad question. Let
23 me ask you another question. Have you had

1 firearms training?

2 A. Yes, I have.

3 Q. Have you had baton training?

4 A. Yes, I have.

5 Q. Have you had defensive tactics training?

6 A. Yes.

7 Q. Have you had de-escalation training?

8 A. Yes.

9 Q. When was the last time you had de-escalation
10 training?

11 A. I am not sure when that would be.

12 Q. Was it within the last five years?

13 A. I am not sure.

14 Q. Was it within the last ten years?

15 A. It would be probably sometime over the course of
16 my employment as a police officer. I am not sure
17 when. I'm not sure if it was as part of the --
18 part of a separate class in the academy or if it
19 was something related to multiple facets training
20 day at the sheriff's office. I'm not sure when
21 it was.

22 Q. All right. So is your answer that at some point
23 in the last twenty-seven years you've had

1 de-escalation training, you just don't know when?

2 A. Yes.

3 Q. Are you familiar with the term use of force
4 continuum?

5 A. Yes, I am.

6 Q. What does that mean?

7 A. Use of force continuum, at one time the way it
8 was trained to me was a triangle. It started off
9 at the bottom of the triangle, if you can picture
10 a triangle with various -- whether it be verbal
11 commands, and then you would move up the triangle
12 to various other techniques while using your
13 hands, and then into necessary -- whether it was
14 baton or some sort of a non or less lethal use of
15 force category. Then up to the top of the
16 pyramid, which would have been use of deadly
17 physical force.

18 Q. Directly related to the use of force continuum,
19 would you agree that there are certain levels of
20 force, as you just described?

21 A. Yes.

22 Q. Okay. And if I told you that in some schools of
23 thought there are four levels of force and in

1 some schools of thought there are five levels of
2 force, would you disagree with that?

3 A. I would not.

4 Q. And if I told you that the first level of force
5 was the mere presence of law enforcement, would
6 you agree with me?

7 A. Yes.

8 Q. Okay. And the second level would be verbal
9 commands, is that fair?

10 A. Yes.

11 Q. And then the third and fourth levels I suppose
12 together are hand control and less lethal force,
13 is that fair?

14 A. I believe so. Without looking at an actual use
15 of force continuum, yes, I would say you are
16 somewhat correct, yes.

17 Q. All right. Well, am I somewhat correct or am I
18 correct?

19 A. From what I recall, I believe that is, that is
20 part of the force continuum. I'm just not
21 certain how they stack up on the pyramid when it
22 comes to -- obviously the pyramid is -- can be
23 rapidly evolving at various times.

1 Q. Do we agree that the top level of force, the most
2 serious level of force, is deadly physical force?

3 A. Yes.

4 Q. Are you familiar with the term positional
5 asphyxia?

6 A. Yes, I am.

7 Q. Would you tell us what it is?

8 A. It is the position that a person is put in that
9 they could lose their ability to breathe.

10 Q. Did you receive training in positional asphyxia
11 as part of your employment with the Erie County
12 Sheriff's Department?

13 A. I believe so, yes.

14 Q. Do you know when that was?

15 A. I do not.

16 Q. Was it within the last five years?

17 A. I am not sure when it was.

18 Q. Was it within the last ten years?

19 A. I honestly could not answer that question. I'm
20 not sure when it was. I don't want to take a
21 guess at.

22 Q. That's a fair point that we should probably talk
23 about. I'm not asking you to guess and I'm not

1 asking you to speculate, so I don't remember and
2 I don't recall are perfectly reasonable answers.
3 Okay?

4 A. Okay.

5 Q. As lawyers we have what are called continuing
6 legal education, we have to go on a yearly basis
7 for sort of follow-up trainings. As a member of
8 the Erie County Sheriff's Department, did you
9 have any sort of yearly follow-up trainings or
10 follow-up trainings at some other interval that
11 were required?

12 A. Yes.

13 Q. Can you describe those, please?

14 A. The -- usually the first training was, if I
15 recall, sometime in January, based upon schedule.
16 I -- when we started working a twelve-hour shift,
17 it was a twelve-hour training day, maybe a
18 ten-hour training day, I'm not sure exactly the
19 length, but it would start off with anything in
20 regards to policy and procedure updates, various
21 topics. It would vary year to year. Whether it
22 was first aid or CPR training or whatever the
23 training may be, it would be utilized into that

1 first phase of training, I believe in January or
2 February. Usually the second phase was firearms
3 training, from what I recall. And then there
4 would have been a third phase of training that
5 would have dealt with the range and firearms,
6 whether it was use of the -- training on the
7 shotgun or the rifle.

8 So usually there was three, from what I
9 recall, three phases throughout the year at the
10 sheriff's office.

11 Q. So can we agree that you had follow-up training
12 on a yearly basis of some sort?

13 A. Yes.

14 MR. D'AQUINO: Mr. Glazer, I'm sorry to interrupt.
15 Is this a good time for a short break, five
16 minutes?

17 MR. GLAZER: Sure. Fine.

18 THE VIDEOGRAPHER: One-thirty-six p.m. We are going
19 off the record.

20 (Whereupon, a short recess was then taken.)

21 THE VIDEOGRAPHER: It is one-forty-three p.m. We are
22 back on the record.

23 (Whereupon, the above-requested previous

1 question and answer were then read back by the
2 reporter.)

3 BY MR. GLAZER:

4 Q. Mr. Achtyl, are you generally familiar with the
5 New York State Penal Law?

6 A. Yes.

7 Q. As part of your employment with the Erie County
8 Sheriff's Department, did you receive training in
9 the Penal Law of New York State?

10 A. Yes.

11 Q. Can you tell me what that training entailed?

12 A. It would include refreshers. If you're inquiring
13 in regards to Article 35, yes.

14 Q. Well, we'll talk about Article 35 in some detail
15 later on, but would you agree that it's important
16 for a deputy sheriff to have some familiarity
17 with the New York State Penal Law?

18 A. Yes.

19 Q. That's why they train you, fair?

20 A. Yes. I guess I'm just trying to understand your
21 question. Can you rephrase it? Usually the
22 training for the Penal Law, the majority of it is
23 done in the academy.

1 Q. That's my question. So let me try to make it a
2 little more easy to understand. What training
3 did you receive in the academy regarding the New
4 York State Penal Law?

5 A. We received a certain number of hours in regards
6 to the Penal Law and the various sections of the
7 Penal Law.

8 Q. Okay. During those hours, what do they tell you?

9 A. There's various discussion in regards to what --
10 certain laws, how they apply, how certain things
11 pertain, how -- what -- in regards to like the
12 use of force section and what is considered use
13 of force and various -- how to -- what laws can
14 be -- force can be used against. It's just
15 general training on the Penal Law.

16 Q. Do they talk to you about probable cause to
17 arrest?

18 A. Yes.

19 Q. Can you tell me what they tell you about probable
20 cause?

21 A. That you have a reason to arrest somebody.

22 Q. Is a more specific statement that you have to
23 have probable cause to make an arrest in New York

1 State?

2 A. Yes.

3 Q. Do you know what the term probable cause means?

4 A. Yes.

5 Q. What does it mean?

6 A. You have a reason to effect an arrest.

7 Q. That's your understanding of the term probable
8 cause, a reason to arrest?

9 A. Yeah. You have a reason to arrest somebody.

10 There's evidence or there's something that
11 substantiates the arrest.

12 Q. Does the Erie County Sheriff's Department require
13 a deputy sheriff to be familiar with the Penal
14 Law?

15 A. I would have to say yes.

16 Q. Does the Erie County Sheriff's Department require
17 deputy sheriffs to have familiarity with the New
18 York State criminal case law?

19 A. Are you asking for Criminal Procedure Law?

20 MR. D'AQUINO: No. Excuse me. Ken, just tell him
21 you don't understand the question. Don't
22 rephrase it yourself.

23 THE WITNESS: All right. Fair enough.

1 BY MR. GLAZER:

2 Q. Do you understand the question?

3 A. No. If you could rephrase it.

4 Q. Okay. You were a deputy sheriff for decades, is
5 that fair?

6 A. Yes.

7 Q. And you know that criminal cases are litigated up
8 through the courts, is that also true?

9 A. Yes.

10 Q. All right. And you know that sometimes cases go
11 up to Appellate Courts and there are appeals and
12 things like that, correct?

13 A. Correct.

14 Q. And do you know that sometimes those cases and
15 the decisions made by those courts color what
16 you're allowed and not allowed to do as a law
17 enforcement officer?

18 A. Correct.

19 Q. So what I'm asking you is, are you required by
20 the sheriff's department to be familiar with
21 those cases that say what you can and cannot do?

22 A. Do --

23 Q. It's not a trick question. I'm just asking --

1 A. I understand it's not a trick question. I guess
2 I'm just trying to explain it in a way -- you're
3 kind of asking a blanket, open-ended question.

4 Q. Let me rephrase the question and try to make it
5 simpler. Does the sheriff's department require
6 you as a deputy sheriff to be familiar with
7 developments in criminal case law?

8 A. They provide updates on case law from time to
9 time, yes.

10 Q. All right. Let me get you back to my question.
11 My question is, do they require you to monitor
12 developments of criminal case law in New York
13 State, yes or no?

14 MR. D'AQUINO: Object to the form.

15 BY MR. GLAZER:

16 Q. You can answer.

17 A. I'm sorry. Could you rephrase? Not rephrase it
18 but repeat the question?

19 Q. Yes. Does the sheriff's department require
20 deputy sheriffs to be familiar with developments
21 in New York State criminal case law?

22 A. With the updates they provide us, yes.

23 Q. So they provide you updates of criminal case law?

1 A. If things change, from time to time, yes.

2 Q. So they provide you with updates. And are you
3 expected to read the updates that they provide
4 you?

5 A. Yes.

6 Q. All right. So can we agree, then, that the
7 sheriff's department does provide you with
8 updates of New York State criminal case law?

9 A. Yes.

10 Q. Okay. And that you have to read those updates so
11 you'll know what you can and cannot do?

12 A. Correct.

13 Q. Just give me one second. I have to try to pull
14 up an exhibit.

15 I'm showing you what's been marked as
16 Deposition Exhibit 4 for identification. Can you
17 see the top half of the first page up on your
18 screen?

19 A. Yes.

20 Q. Does that say Exhibit 4 on the right-hand side?

21 A. I believe it says 4, yes.

22 Q. Does the subject state Erie County Sheriff's
23 Office training procedures?

1 A. Yes.

2 Q. I'm going to scroll down to page six of the
3 document. Do you see the top of the page where
4 it says C?

5 A. Yes.

6 Q. All right. I'm going to read this, and tell me
7 if I'm reading it correctly. All employees shall
8 be required to complete a minimum of twenty-one
9 hours of annual in-service training which may
10 address the follow topics depending upon their
11 individual job assignments. Number one, annual
12 review of statutory or case laws affecting law
13 enforcement, jail operations, civil enforcement,
14 et cetera.

15 Did I read that properly?

16 A. Yes.

17 Q. So annually there's a review of statutory or case
18 law affecting your area of law enforcement, is
19 that fair?

20 A. Yes.

21 Q. And number two, is there also an agency policy on
22 the use of force, including the use of deadly
23 force, that you have to refresh yourself on every

1 year?

2 A. I would say yes, but it's part of the training
3 that they provide to you.

4 Q. But the answer to my question is yes?

5 A. Yes.

6 Q. Well, let me ask you this. Is it important for a
7 law enforcement officer to be able to properly
8 determine when a citizen has committed a crime?

9 A. Yes.

10 Q. And is it likewise important for a law
11 enforcement officer to be able to determine when
12 a citizen has not committed a crime?

13 A. Yes.

14 Q. Do you agree with me that a law enforcement
15 officer cannot make an arrest unless there is a
16 violation or a crime committed as regards the
17 Penal Law of New York State? Was that a
18 confusing question?

19 A. It was kind of confusing because there's other
20 things than just the Penal Law.

21 Q. Well, is it fair to say that concerning the New
22 York State Penal Law, you can't arrest somebody
23 unless they commit a non-criminal violation or a

1 crime?

2 A. Correct.

3 Q. Okay. Can you tell us the difference between a
4 violation and a crime?

5 A. A violation level offense has to do with the fine
6 and the number of days they may spend in jail
7 versus being -- it's a non-criminal offense
8 versus being a criminal matter, and then your
9 serious criminal matters.

10 Q. Okay. So can we agree that a violation of the
11 New York State Penal Law is not even a crime?

12 A. That is correct.

13 Q. Unserious, true?

14 A. I would say it has -- there's a reason why it
15 exists. Is it as serious as a misdemeanor or a
16 felony? No, it is not.

17 Q. So on the grand scale of violations,
18 misdemeanors, felonies, it's the least serious,
19 correct?

20 A. Correct.

21 Q. Is there any level of offense that is lower than
22 a violation?

23 A. Are you referring to just the Penal Law?

1 Q. Any law in New York State.

2 A. Yes, there is.

3 Q. Which is?

4 A. An infraction.

5 Q. So a traffic infraction, a speeding ticket,
6 literally is the only level of offense lower than
7 a violation in New York State?

8 A. To get technical, yeah. You have ordinances and
9 infractions, yes.

10 Q. Ordinances are town laws, village laws?

11 A. Correct.

12 Q. Walking down the street with an open container of
13 beer is an ordinance usually, is that fair?

14 A. Yes.

15 Q. Did you ever walk down a street with an open
16 container of beer yourself?

17 MR. D'AQUINO: Object to the form. Excuse me, Ken.
18 You've got to hold on so I can object.

19 THE WITNESS: Sure. Okay.

20 MR. D'AQUINO: What does that have to do with
21 anything?

22 MR. GLAZER: I'm asking him about ordinances and he's
23 telling me what's serious and not serious, so I

1 think it's relevant to ask him if he's ever done
2 it.

3 MR. D'AQUINO: His conduct in this case is
4 categorized and characterized by the complaint
5 against him, it doesn't have anything to do with
6 whether he's walked down the street with an open
7 can of beer. So I don't understand the question,
8 why it would be asked.

9 MR. GLAZER: Well, I guess with all due respect, it's
10 not my job to explain to you why I'm asking the
11 questions. So I'll just ask you, are you
12 directing him not to answer it or can I move on?

13 MR. D'AQUINO: It is your job to ask relevant
14 questions. And whether he's ever walked down the
15 street with an open can of beer has nothing to do
16 with this case, I think we can agree on that
17 point. So why would you ask him that question?

18 MR. GLAZER: We can't agree on that point. And at
19 this point I'm asking you just to either direct
20 him not to answer the question or to finish your
21 objection so that I can move on with my
22 examination.

23 MR. D'AQUINO: I think you are beyond the proper

1 range of questioning to ask him an open-ended
2 question about his personal conduct at any point
3 in time in his life that has nothing to do with
4 your complaint.

5 MR. GLAZER: Is that a direction not to answer the
6 question?

7 MR. D'AQUINO: Yes.

8 MR. GLAZER: Okay. Miss Simonin, could you index
9 that for a ruling from the Court?

10 THE REPORTER: Yes.

11 MR. GLAZER: Thank you.

12 BY MR. GLAZER:

13 Q. Mr. Achtyl, can we agree that a sheriff cannot
14 arrest a citizen simply because the citizen made
15 the sheriff angry?

16 A. Yes.

17 Q. Is it a crime to make a sheriff angry?

18 A. Is it a crime to make the sheriff angry, is that
19 the question?

20 Q. The question is, is it a crime to make a sheriff
21 angry?

22 A. Maybe if you could rephrase that, because I think
23 there's crimes that are committed that could make

1 anyone angry.

2 Q. That's not my question and I won't rephrase it,
3 but I will ask it again. My question is, is it
4 in any way violative of the New York State Penal
5 Law to make a sheriff angry in and of itself?

6 A. Not in the Penal Law, no.

7 Q. Is it a violation of something else to make the
8 sheriff angry -- or, a sheriff angry?

9 A. No.

10 Q. So making a sheriff angry is not against the law?

11 A. That is correct.

12 Q. Making any law enforcement officer angry is not
13 against the law?

14 A. That is correct.

15 Q. Not a felony, is that correct?

16 A. Correct.

17 Q. Not a misdemeanor, true?

18 A. Correct.

19 Q. Not even a violation, is that fair?

20 A. Fair.

21 Q. Is it a crime in New York State to use a swear
22 word toward a sheriff?

23 A. No.

1 Q. You referenced earlier in your testimony Article
2 35 of the New York State Penal Law. And I'll
3 take that to mean that you are generally familiar
4 with Article 35?

5 A. For the most part, yes.

6 Q. Okay. And again, I'm going to ask you some
7 questions about this article. And if you can't
8 answer the questions without me pulling it up,
9 then I'll pull it up.

10 A. Okay.

11 Q. So you're allowed to say I don't recall.

12 A. Fair enough.

13 MR. D'AQUINO: Just so we can get through that, my
14 only concern is that the question reflects
15 whether you're asking him from his recollection
16 or just what does the document say. And if it's
17 the latter, then just let him see it.

18 MR. GLAZER: I understand what you're saying.

19 BY MR. GLAZER:

20 Q. When you were a sheriff, Mr. Achtyl, were you
21 required to familiarize yourself with Article 35?

22 A. Yes.

23 Q. What's Article 35 about?

1 A. Justification of use of force in New York State.

2 Q. So Article 35 applies to every law enforcement
3 officer in New York State, is that fair?

4 A. That's fair.

5 Q. So it applies to a deputy sheriff in Erie County,
6 is that true?

7 A. Yes.

8 Q. And just so that we're clear, if I said to you
9 Erie County Sheriff's, the Erie County Sheriff's
10 Department, does require you to be familiar with
11 Article 35, would you agree with that?

12 A. Yes. The Erie County Sheriff's Office would
13 require you to be familiar with Article 35.

14 Q. When you started with the sheriff's department,
15 what was your assignment, were you patrol, were
16 you jail or something else?

17 A. I was assigned to patrol. I believe my first
18 assignment was orientation, as with any job,
19 paperwork and assignment of equipment. I believe
20 there was a week-long orientation process. From
21 there I was then assigned to the Rath Building
22 for a certain period of time downtown as a patrol
23 officer, which was probably within maybe three

1 months. And then from there I was assigned to
2 patrol, still assigned to patrol, in the various
3 districts throughout the county.

4 Q. How long were you a patrol officer?

5 A. Nineteen years.

6 Q. So that would have been from 2000 to 2019?

7 A. Yes.

8 Q. What happened in 2019? Is it just this incident
9 or is it something else?

10 A. There was a few reasons that I chose. But I
11 guess getting back to your question, what is your
12 question?

13 Q. My question is, how did your assignment change in
14 2019 from patrol to something else?

15 A. I was always a patrol officer with the sheriff's
16 office. At a certain point in time in I believe
17 -- I'm not sure of the specific year, but I was
18 assigned to the domestic violence office as a
19 domestic violence sheriff's deputy and followed
20 up on domestic violence and dealt with victims of
21 domestic violence reports. That would have been
22 roughly, roughly six years. In addition to being
23 a patrol officer, I was also assigned to the

1 underwater recovery team as a level -- PADI level
2 three rescue and recovery scuba diver.

3 Q. Hold on one second. PADI is P-A-D-I?

4 A. Correct. Professional Association of Divers
5 Institute I believe it is.

6 Q. Sorry for interrupting you. Go ahead.

7 A. So those for the most part were all under patrol,
8 as a patrol deputy.

9 Q. Okay. Can you tell me what your duties were as a
10 patrol deputy?

11 A. General patrol of a specific area or a district,
12 enforcement of laws, traffic laws, answering 911
13 calls and non-emergency calls, enforcement of
14 laws or ordinances within that town or village.
15 That generally sums up what -- you would follow
16 up and also investigate certain crimes or
17 offenses. That's, generally speaking, the job of
18 a patrol officer.

19 Q. Is it fair to say that you handled many, many,
20 many traffic stops?

21 A. Yes.

22 Q. Would you say thousands?

23 A. I would say, yes.

1 Q. Were you ever assigned to the jail?

2 A. No, I was not.

3 Q. Have you worked continuously for the Erie County
4 Sheriff from June of 2000 until the time that you
5 resigned in 2020, I believe it was?

6 A. I resigned in September of 2019. So I worked
7 nineteen years for the sheriff's office, yes.

8 Q. Nineteen. I apologize. So you worked for the
9 sheriff continuously for that nineteen years?

10 A. Yes.

11 Q. During that time, did you ever get a promotion?

12 A. A promotion to a different rank, no.

13 Q. Did you get a raise?

14 A. Raises were based -- contractual.

15 Q. Did you receive appropriate raises commensurate
16 with your contract with the County?

17 A. Yes.

18 Q. You said that you've made thousands of traffic
19 stops in your career, is that accurate?

20 A. I would say yes.

21 Q. In your experience, how long should a stop
22 related to a simple traffic infraction take from
23 beginning to end?

1 A. That's kind of an open-ended question.

2 Q. I understand that.

3 A. I mean, I will give you my -- I guess I will give
4 you my understanding of it. It should be, based
5 upon the situation at hand, it should be as short
6 as possible.

7 Q. Okay.

8 A. But things do come up in that time that you have
9 a person stopped.

10 Q. All right. Well, let me ask you about a speeding
11 ticket. How long should a driver speeding take?

12 A. I would say probably within fifteen minutes, as
13 long as you can get the information back, as long
14 as dispatch is not busy. There's various things
15 that apply I guess to your question. It's not --
16 hopefully it can be done within fifteen minutes.

17 Q. And again, it's not a trick question.

18 A. Sure.

19 Q. And I understand that every traffic stop is not
20 the same, but I appreciate the answer that you
21 gave. Correct me if I'm wrong. Unless some
22 aggravating thing happens, that a routine traffic
23 stop should take in the area of fifteen minutes?

1 A. A routine traffic stop, minus any kind of
2 additional things that could arise, whether it's
3 equipment or whether it's computer related,
4 dispatch related, yes, fifteen minutes.

5 Q. How common is it in your experience for a traffic
6 stop to take over an hour?

7 A. It could happen, yes.

8 Q. How common is it?

9 A. How common? It's based upon the, it's based upon
10 the circumstances. It's based upon what's going
11 on during that traffic stop. If it's a DWI, it
12 could obviously take longer. If it's a situation
13 where you have a person that's not cooperating or
14 listening to what's going on, it definitely can
15 take longer. Yes, a traffic stop could last that
16 long.

17 Q. All right. Let's just take simple traffic
18 infractions like speeding tickets and failure to
19 yield and things like that.

20 A. Sure.

21 Q. With regard to those infractions, how many of
22 those out of ten would you expect to take an hour
23 or more on average?

1 A. I really can't answer that question. It's based
2 -- I mean, if you're saying it's a simple traffic
3 stop for a speeding ticket, I would say, if it's
4 simple as you say, fifteen minutes.

5 Q. Okay. Do you know a woman named Julie Marinaro?

6 A. Yes, I do.

7 Q. Do you remember pulling over Miss Marinaro with
8 her nanny and two children for a traffic
9 infraction after a sledding outing in 2014?

10 A. Driving the wrong way out of Chestnut Ridge Park
11 coming straight at me, yes, I do.

12 Q. A traffic infraction?

13 A. Yes.

14 Q. She didn't hit you, is that correct?

15 A. No, she did not.

16 Q. No one was injured, is that true?

17 A. That's correct.

18 Q. And am I correct that she was with a nanny and
19 two children?

20 A. I believe so, yes.

21 Q. Okay. Did Miss Marinaro have any outstanding
22 warrants?

23 A. From what I recall, no.

1 Q. If I told you that Miss Marinaro was at the side
2 of the road with her nanny and children for over
3 an hour during that traffic stop, would you have
4 reason to disagree with that?

5 A. I recall the traffic stop and I knew it took some
6 time because of Mrs. Marinaro's actions.

7 Q. Okay. So if I told you that it took an hour or
8 more, would you have a reason to disagree with
9 that?

10 A. Under those circumstances, no, I don't have a
11 reason to disagree with you under -- in regards
12 to that.

13 Q. Do you remember Miss Marinaro asking you to use
14 the bathroom?

15 A. Not that I recall. No, I don't.

16 Q. Well, I guess I'll skip ahead, then, and ask you
17 if you remember her urinating on herself?

18 A. No, I do not.

19 Q. Okay. If I told you that she did ask you to use
20 the bathroom and that you refused, would you have
21 a reason to disagree with that?

22 A. If -- I do not. No, I don't. I don't believe --
23 I don't recall telling her she could not use the

1 bathroom. There was no bathroom around to use,
2 so I would have to say that I did not tell her
3 she couldn't go to the bathroom.

4 Q. Where was the stop again?

5 A. It was at the entrance to Chestnut Ridge Park in
6 Orchard Park, New York.

7 Q. How many times have you been to Chestnut Ridge
8 Park?

9 A. Many times.

10 Q. Are you familiar with the shelter right at the
11 front where there's a lavatory?

12 A. Yes.

13 Q. So there is a bathroom at Chestnut Ridge Park, is
14 that correct?

15 A. There's many bathrooms at Chestnut Ridge Park,
16 yes. After hours, I'm not sure what the status
17 of -- if they're locked or not.

18 Q. What was the traffic infraction for? I'm sorry?
19 Did I miss something? Did I cut you off, Mr.
20 Achtyl?

21 A. No, you didn't cut me off. I wasn't sure if
22 someone else was talking.

23 Q. What was the traffic infraction that you stopped

1 Miss Marinaro for violating on that day?

2 A. If memory serves me correctly, I stopped her --
3 if it was her babysitter driving the vehicle, for
4 driving the wrong way out of the one-way
5 entrance.

6 Q. So it sounds like you remember this incident
7 well. Is that correct?

8 A. I remember the incident, yes. I can't say I
9 remember it well.

10 Q. Well, do you remember that Miss Marinaro was a
11 passenger?

12 A. Yes.

13 Q. And do you remember that the babysitter was
14 driving?

15 A. Yes, I do.

16 Q. And do you remember that there were two little
17 kids in the back?

18 A. I do, yes.

19 Q. Do you remember at some point taking Miss
20 Marinaro out of the vehicle and putting her in
21 the back of your squad car in front of her kids?

22 A. I remember Miss Marinaro going in and out of her
23 vehicle numerous times, going into the trunk

1 numerous times, after she was informed not to go
2 into the trunk nor rummage through her trunk, as
3 it created some officer safety issues. And I do
4 recall that at that point in time. Eventually, I
5 believe at the time it was my sergeant who showed
6 up and instructed me further on the outcome of
7 that scenario.

8 Q. All right. So referring you back to my question,
9 do you recall at some point bringing Miss
10 Marinaro into the back of your squad car in front
11 of her kids?

12 A. I don't recall bringing her -- at some point,
13 yes, she was brought into the back of the patrol
14 car, yes.

15 Q. Do you recall taking her to jail that day?

16 A. I am not sure if it was myself or if it was the
17 other deputy who took her to jail. I'm not sure.

18 Q. Do you recall -- I'm sorry. Go ahead.

19 A. I don't recall.

20 Q. Do you recall charging her with a crime?

21 A. I believe I recall charging her with obstruction,
22 yes.

23 Q. So she got charged with a crime, at some point

1 she got taken to jail, is that correct?

2 A. Correct.

3 Q. You don't have any reason to disagree that she
4 urinated on herself, is that correct?

5 A. I am not sure what she did to herself. I don't
6 know. I don't remember that.

7 Q. Okay. If I told you that she alleges that she
8 asked you to go to the bathroom, you said no, and
9 then she urinated on herself, would you have a
10 reason to disagree with that?

11 A. No.

12 Q. You indicated to us that she was charged with a
13 crime and taken to jail. Do you know what
14 happened to the charges against her?

15 A. I do not, no.

16 Q. Would it surprise you to learn that they were all
17 dismissed?

18 A. Not that I'm aware of, no.

19 Q. Well, I'm not asking you what you're aware of.
20 I'm asking you if I told you that --

21 A. Would it surprise me? Charges get dismissed all
22 the time for various reasons, and I am not privy
23 to why charges are dismissed and we really don't

1 get a follow-up with what happens with our
2 charges.

3 Q. So if I told you that all of those charges were
4 dismissed, you'd have no reason to disagree with
5 me, would you?

6 A. I would not, no.

7 Q. Okay. And that's because charges get dismissed
8 all the time for a variety of reasons, as you've
9 testified, correct?

10 A. That's correct.

11 Q. Do charges get dismissed sometimes if the DA
12 believes that they're insufficient or improper?

13 A. Could be, yes.

14 Q. Do charges get dismissed if the DA determines
15 that the individual didn't do what the officer
16 claims they did, does that happen?

17 A. I believe anything would be possible, yes. I
18 don't know what the -- where you're trying to go
19 at with your question.

20 Q. Do you know a retired corrections officer named
21 Timothy Michaels?

22 A. I do not, no.

23 Q. Well, do you recall pulling over a woman named

1 Michelle Grover in August of 2010?

2 A. I do not, no.

3 Q. And August of 2010 we've established was sort of
4 a rough period for you, is that right, you were
5 getting divorced, et cetera?

6 MR. D'AQUINO: Object to the form.

7 BY MR. GLAZER:

8 Q. You can answer if you understand.

9 A. Yes. That's the -- yes.

10 Q. And I'm not trying to delve into your personal
11 life. I'm just saying -- I've never been
12 divorced, but I assume that the period of time
13 during which you're getting divorced is a rough
14 time. Is that fair?

15 A. For me personally, if you're asking that
16 question, yes, it was.

17 Q. Okay. Let me give you some more information
18 about Michelle and let's see if you can remember
19 who she is. Do you remember pulling over a woman
20 named Michelle Grover on Waverly Road in August
21 of 2010? Miss Grover would have had her son
22 Zander, who was four years old, in the car at the
23 time.

1 A. I do not remember, no.

2 Q. Okay. And if I told you that Michelle was
3 stopped for speeding on Waverly near Pinewood in
4 the Village of Springville, would you recall
5 that?

6 A. As we established earlier, there was thousands
7 and thousands of traffic stops that I conducted.
8 Specifically, I don't recall the stop that you're
9 speaking of.

10 Q. Okay. Is Waverly near Pinewood in the Village of
11 Springville an area that you've patrolled over
12 the course of your employment with the sheriff's
13 office?

14 A. Waverly Street, yes. I'm not sure if there's --
15 if Pinewoods (sic) is down there. It's probably
16 a smaller street maybe. I'm not sure.

17 Q. Okay. But yes to Waverly?

18 A. Yes.

19 Q. And yes to Springville?

20 A. Yes.

21 Q. Okay. Well, if I told you that Miss Grover was
22 pulled over and you determined -- strike that for
23 one second. Let me give you some background.

1 I'm trying to give you more information to see if
2 you will remember this. If I told you that Miss
3 Grover was found by you to have an outstanding
4 warrant for a traffic ticket, do you recall that?

5 A. I don't recall the stop.

6 Q. If I told you that retired Corrections Officer
7 Timothy Michaels is Miss Grover's father, would
8 you remember that?

9 A. No, I would not.

10 Q. Okay. If I told you that Mr. Michaels arrived on
11 the scene and asked you if he could take the
12 child home since you were going to take Miss
13 Grover to jail, do you recall that?

14 A. I don't recall your specific instance. However,
15 if the person you're referring to has a warrant,
16 then usually it's out of our hands, that person
17 does go to jail or to the agency that's -- that
18 wants them. And if a child is involved, the
19 child is eventually turned over to a family
20 member, once that family member -- it can be
21 established who that family member is and if they
22 have legal reason to have that child.

23 Q. All right. Fair enough. So let me ask you this

1 as a follow-up. If you pull over a driver and
2 determine that that driver is going to jail and
3 there is a four-year-old in the back seat, if you
4 can determine that the four-year-old's
5 grandfather has shown up, would it be within your
6 discretion to allow the four-year-old to leave
7 with his grandfather?

8 A. Yes. When it's a proper and safe time to do so,
9 yes.

10 Q. Okay. So as long as it's proper and safe to do
11 so, it would be appropriate in that circumstance
12 to allow a four-year-old child to leave with his
13 grandfather?

14 A. Yes. Usually it would be directed by the
15 supervisor, who would be notified since there was
16 a warrant, and that they would be advised and it
17 would be properly recorded and dispatched as to
18 what's going on with the child who's with that
19 parent at that time.

20 Q. Do you know a deputy named Deputy Neil, N-E-I-L?

21 A. Deputy Neil Held, yes.

22 Q. If I told you that that deputy was present, would
23 that refresh your recollection at all?

1 A. In regards to which stop are you talking about?
2 The Orchard Park stop, Deputy Neil Held was
3 present. I believe at the time he was either the
4 deputy assisting me or the supervisor on scene
5 that made a collective judgment call to place the
6 lady in Orchard Park under arrest.

7 Q. Do you know if Deputy --

8 A. I don't believe Deputy Held was -- honestly, I
9 don't recall in regards to the traffic stop
10 you're talking about in 2010.

11 Q. Do you know what deputy was present with you in
12 the traffic stop in 2010?

13 A. I do not.

14 Q. Do you know that there was another deputy present
15 with you in 2010 on Waverly near Pinewood?

16 A. Under normal circumstances when there is a
17 warrant or something extenuating involved, yes,
18 usually another deputy or an officer, police
19 officer from another jurisdiction, does usually
20 arrive on the scene to help out.

21 Q. In general, would you say that you try to refrain
22 from using profanity toward citizens during
23 arrests?

1 A. Absolutely.

2 Q. Okay. Do you remember telling Corrections
3 Officer Michaels to, quote, fuck off, unquote?

4 A. There would be no reason for me to tell Mr.
5 Michaels that, absolutely none.

6 Q. Okay. So my question is, do you recall telling
7 him that?

8 A. I do not telling him that.

9 Q. Do you recall telling him do you want to go to
10 jail?

11 A. If it's perceived where he's interfering with the
12 arrest of another person, that is absolutely
13 possible.

14 Q. Okay. Did you perceive that he was interfering?

15 A. I don't recall the traffic stop. I'm just
16 telling you that if a person does interfere in a
17 traffic stop, there is a possibility, a traffic
18 stop or any other arrest, that that person could
19 be told that he could be arrested. He could be
20 causing more issues at the time during the
21 situation than what's warranted.

22 Q. Would it ever be appropriate to tell a
23 four-year-old you're going to jail too with your

1 mom?

2 A. Mr. Glazer, at that time you had indicated I was
3 going through a divorce. I had young kids of my
4 own. I would never tell a child that they would
5 be going to jail with their mother, absolutely
6 not.

7 Q. So you don't recall that?

8 A. I do not recall that.

9 Q. So then I'll take it that you don't recall a
10 Susan Michaels, the mother of Michelle Grover,
11 coming to the scene of that stop as well?

12 A. I do not recall the traffic stop from 2010. I do
13 not.

14 Q. So then you don't recall telling Susan Michaels
15 get the fuck out of here or you're going to jail
16 too?

17 A. I would not say that to somebody just as they
18 show up at the scene of an incident unless there
19 was something pertaining to where there may be
20 something that could occur because of their
21 presence, whether it would be a domestic or
22 something related out of the scope of the normal
23 coming by to pick up a child if they're requested

1 to be there, or nothing related to a simple
2 indication that you stated earlier about picking
3 up a child.

4 Q. And if Mr. Michaels and Mrs. Michaels have given
5 affidavits to the contrary of what you're saying,
6 do you have an explanation for that?

7 MR. D'AQUINO: I'm going to object to -- hold on,
8 Ken. Hold on.

9 THE WITNESS: Sure.

10 MR. D'AQUINO: I'm not sure what you're asking him.
11 That somebody else said something and does he
12 have an explanation of what they thought? I'm
13 not understanding the question.

14 MR. GLAZER: That's not my question. I can repeat
15 it.

16 MR. D'AQUINO: You said does he have an explanation
17 for that. That's what I'm not understanding.

18 MR. GLAZER: Okay. I can rephrase it.

19 BY MR. GLAZER:

20 Q. Do you have any idea why Susan and Timothy
21 Michaels would say that you said all these
22 things?

23 MR. D'AQUINO: Object to the form.

1 BY MR. GLAZER:

2 Q. Do you have any idea why they would say that you
3 said these things?

4 MR. D'AQUINO: He heard the question. Just give him
5 a chance to answer.

6 MR. GLAZER: Oh, okay. I thought he was waiting for
7 you to direct him.

8 THE WITNESS: I was waiting for you guys to finish
9 talking. I wasn't sure. Sorry.

10 BY MR. GLAZER:

11 Q. Let me ask you again. Do you have any reason --
12 strike that.

13 MR. GLAZER: Sue Ann, will you just repeat my
14 question? Thank you.

15 (Whereupon, the above-requested question at
16 page 95, line 2, was then read back by the
17 reporter.)

18 THE WITNESS: I could give various reasons on why
19 they may say something like that.

20 BY MR. GLAZER:

21 Q. Why don't you give them to me.

22 MR. D'AQUINO: Wait a minute, Ken. Wait.

23 THE WITNESS: Sure.

1 MR. D'AQUINO: Was your question if he has any idea
2 why they did say those things?

3 MR. GLAZER: Yes.

4 THE WITNESS: I have no idea why they said those
5 things.

6 BY MR. GLAZER:

7 Q. Okay. Do you even know who Timothy Michaels is?

8 A. I do not know Timothy Michaels, no.

9 Q. Do you know Susan Michaels or Michelle Grover?

10 A. I do not.

11 Q. Okay. Do you know Zander Grover?

12 A. I do not.

13 Q. So you don't even know these people?

14 A. Not that I recall from 2010. As I stated
15 earlier, dealing with thousands of traffic stops
16 and thousands of people, sometimes certain things
17 stand out and sometimes they don't.

18 Q. So this just might be something that didn't stand
19 out to you?

20 A. Not that I recall.

21 Q. I guess if I asked you would it surprise you that
22 all of the charges relative to that incident were
23 dismissed, you wouldn't have any information

1 about that, is that fair?

2 A. I have no information in regards to when charges
3 are dismissed, I do not.

4 Q. Do you frequently use profanity during contact
5 with citizens of Erie County, or at least did you
6 when you were a sheriff?

7 A. Frequently?

8 Q. Yes.

9 A. No.

10 Q. From time to time did you use profanity?

11 A. Profanity was used maybe at times of certain
12 situations, yes.

13 Q. Such as?

14 A. Such as the guy in Springville who pointed a
15 loaded sawed-off shotgun at me and told me he is
16 reloaded, after firing two rounds off and chasing
17 people around a gas station and store and chasing
18 employees into a freezer, that he's reloaded and
19 ready to go, did I use profanity in describing to
20 him to put the gun down? Yes, I did.

21 Q. So have you used profanity in situations where
22 someone is not holding a firearm or shooting at
23 you?

1 A. I would say yes.

2 Q. Tell me about those situations.

3 A. I can't recall a specific situation. A person
4 maybe -- I don't recall a specific situation.
5 Have I used profanity? To answer your question,
6 yes.

7 Q. Would you use profanity with a citizen if they
8 made you angry?

9 A. No, I would not.

10 Q. Would that be appropriate to do?

11 A. No, it would not.

12 Q. Okay. I'm going to ask you some questions about
13 Sheriff Howard.

14 A. Okay.

15 Q. I'm going to apologize because I believe I asked
16 you this question already. Did you know Sheriff
17 Howard before you started working for the Erie
18 County Sheriff's Department?

19 A. Did I know Sheriff Howard before?

20 Q. Personally.

21 A. No. I did not know him personally, no.

22 Q. Did any family member or friend of yours know him
23 personally before you started working at the

1 sheriff's department?

2 A. Well, I worked part-time in the Town of Eden and
3 I was a volunteer police officer since I
4 graduated from high school in 1991. His brother
5 Pat Howard was the chief of police in the Town of
6 Eden.

7 Q. So Pat Howard would -- go ahead. I'm sorry.

8 A. Pat Howard was his brother. Did I know Tim
9 Howard? No, I did not.

10 Q. So you worked for Pat Howard at that time, is
11 that fair?

12 A. That is fair.

13 Q. And Pat Howard is Tim Howard's brother?

14 A. Correct.

15 Q. Did Pat Howard ever introduce you to Sheriff
16 Howard?

17 A. No, he did not.

18 Q. Did you guys ever talk about Sheriff Howard?

19 A. No, we did not.

20 Q. Prior to your first day of employment with the
21 Erie County Sheriff's Department, did you ever
22 speak to Sheriff Howard?

23 A. Prior to my employment, during the interview

1 process or the process that led up to the
2 position and being hired, I spoke with him on the
3 phone as in regards to the status of my
4 application.

5 Q. Okay. Before you submitted an application with
6 the Erie County Sheriff's Department, did you
7 ever speak to Sheriff Howard for any reason?

8 A. Not that I'm aware of, no.

9 Q. During your employment with the Erie County
10 Sheriff's Department, how often would you see the
11 sheriff in person?

12 A. I hardly saw the sheriff being employed as a
13 sheriff's deputy.

14 Q. Okay.

15 A. I would say -- when he was the sheriff I don't
16 think I saw him at all until he came to the
17 Village of Springville where I was honored, a
18 proclamation was put in place for the incident
19 that occurred that I discussed earlier. From
20 what I recall, that would be the first time that
21 I actually had an opportunity to speak with him
22 one on one.

23 MR. GLAZER: I don't even know what my question was.

1 Can you repeat my question? Can you read it
2 back, Sue Ann? I think it was about when he
3 would see the sheriff.

4 (Whereupon, the above-requested question at
5 page 100, line 9, was then read back by the
6 reporter.)

7 BY MR. GLAZER:

8 Q. Can you give me an answer to that question?

9 A. I just did.

10 MR. D'AQUINO: He told you hardly ever. I'm not sure
11 why you're asking him again.

12 MR. GLAZER: He told me about a proclamation or
13 something like that.

14 MR. D'AQUINO: You might not have heard the first
15 part of his answer.

16 Sue Ann, would you mind reading his answer
17 back, please?

18 (Whereupon, the above-requested answer at
19 page 100, line 12, was then read back by the
20 reporter.)

21 MR. GLAZER: Okay. Thank you.

22 BY MR. GLAZER:

23 Q. So, Mr. Achtyl, you chose to add the part about

1 the proclamation, is that correct?

2 MR. D'AQUINO: Object to the form.

3 BY MR. GLAZER:

4 Q. Is that right?

5 A. You had asked me -- my understanding of your
6 question was how often I spoke with the sheriff.
7 And I answered hardly ever, and I explained to
8 you the first time that I actually did speak to
9 him was during that event, yes.

10 Q. Did I ask you about the first time you spoke to
11 him?

12 MR. D'AQUINO: Object to the form.

13 BY MR. GLAZER:

14 Q. Did I ask you about the first time you spoke to
15 him?

16 A. No.

17 Q. Okay. Well, just try to confine your answers to
18 my questions and we'll get through this a lot
19 faster.

20 A. I understand that.

21 MR. D'AQUINO: I object to the colloquy. I don't
22 think he's going beyond your question to tell you
23 the first time he saw the sheriff when your

1 question was how often did you speak to or see
2 the sheriff. It's pretty much exactly what you
3 were asking him.

4 MR. GLAZER: You don't think -- him going into the
5 proclamation that he received in the Village of
6 Springville was responsive to my question, you
7 think that was responsive to my question?

8 MR. D'AQUINO: The question was how often he saw or
9 spoke with the sheriff, and in answering it he
10 told you the first time he saw him, which was
11 many years after he had been with the department.

12 MR. GLAZER: Fine. Can we agree the answer --

13 MR. D'AQUINO: It's totally relevant.

14 MR. GLAZER: The answer was hardly ever, that was the
15 answer, right?

16 MR. D'AQUINO: But my position is you can't edit his
17 answers based on what you like or don't like.

18 MR. GLAZER: His answers are going to be on the
19 record no matter what I said. I'm asking him
20 questions and trying to keep this from going
21 seven hours long as a favor to him. I don't care
22 how long we're here. I'll just move on.

23 BY MR. GLAZER:

1 Q. Have you ever been inside the sheriff's office?

2 A. Can you please rephrase that? Because -- you're
3 speaking specifically of Sheriff Howard's office?

4 Q. That's correct.

5 A. Have I ever been inside the sheriff's -- not his
6 office, no.

7 Q. Have you ever had a private conversation with the
8 sheriff?

9 A. Yes.

10 Q. When was the last time you had a private
11 conversation with the sheriff?

12 A. I would say when he appeared at my trial in
13 September of 2019.

14 Q. Okay. Let's start from the last private
15 conversation you had. So the last private
16 conversation you had with the sheriff was at your
17 trial in September of 2019, is that accurate?

18 A. Yes.

19 Q. What day of the trial was it?

20 A. The last time -- that's the question you're
21 asking, the last time?

22 Q. Right.

23 A. So it would have been the Friday I believe, the

1 day of the verdict, if I recall correctly.

2 Q. If I told you that the verdict was September the
3 27th of 2019, would you have reason to disagree
4 with that?

5 A. No, I would not.

6 Q. So your indication is that you had a private
7 conversation with the sheriff on that date, is
8 that fair?

9 A. Could you please be more specific in regards to a
10 private conversation? Simply saying hello and
11 how are you, one on one, yes.

12 Q. Okay. What else was said between you and the
13 sheriff?

14 A. To be honest, I don't recall, I mean, what was
15 specifically said other than his support. I
16 mean, I don't know specifically what his words
17 were other than generally characterized it was
18 his support.

19 Q. Okay. So is it fair to say that the sheriff
20 indicated to you on the 27th of September of 2019
21 that he was there to support you?

22 A. He offered support and he indicated he'd be at my
23 trial to know what was transpiring, to see

1 firsthand what was taking place and what had
2 developed out of the investigation, what was
3 transpiring.

4 Q. All right. Well, I want to talk specifically
5 about the support. What did he say to you with
6 regard to being there to support you?

7 A. I don't want to sound -- I guess I just answered
8 this question for you.

9 MR. D'AQUINO: Ken, the question is what did he say
10 specifically. So if you recall, say so.

11 THE WITNESS: I do not recall. I do not recall what
12 he specifically said other than it was just
13 characterized generally as what I interpreted as
14 support.

15 BY MR. GLAZER:

16 Q. Okay. So you know that he was there to support
17 you, but you don't remember what he said?

18 A. I don't remember. It was a very difficult time.
19 As you indicated, my divorce was, and I would
20 have to say that was right up there with my
21 divorce.

22 Q. Just so that I have an answer to my question, you
23 indicated on the record that the sheriff was

1 there to support you and that was what your
2 conversation was about, but now you're telling us
3 that you don't remember what was said, is that
4 fair?

5 A. Yes, that's fair. I don't remember specifically
6 what was said.

7 Q. Did you speak to him in the courtroom or in a
8 private room or somewhere else?

9 A. In the courtroom prior to the start of any
10 proceedings, yes.

11 Q. Every day?

12 A. I don't recall if it was every day. I don't
13 recall.

14 Q. Do you know if he was there every day?

15 A. I don't believe he was there every day.

16 Q. Do you know how many days he was there?

17 A. If I remember correctly, I believe it was -- it
18 was a five-day event, I believe he was there
19 maybe four.

20 Q. The first day was primarily jury selection, is
21 that fair?

22 A. From what I recall, yes.

23 Q. Okay. During the course of that five days, how

1 many private conversations did you have with the
2 sheriff, just the two of you?

3 A. I'm not -- I really don't know. I'm not sure how
4 many conversations we had. He would -- I would
5 approach him and thank him for being there, I
6 would shake his hand. He was my boss, or is my
7 boss at the time. There was really no in-depth
8 conversation per se I guess, as you're saying,
9 personal conversation, that I can recall.

10 Q. When you would say thank you to him and shake his
11 hand, what would he say back to you?

12 MR. D'AQUINO: You're asking him what did he say
13 back?

14 MR. GLAZER: Yes.

15 THE WITNESS: I don't recall what he said back to me.
16 I don't -- all I can do is generally summarize it
17 as what I interpreted as his support during this
18 very difficult time that I was going through.

19 BY MR. GLAZER:

20 Q. He at some point wrote a letter of support on
21 your behalf, is that correct?

22 A. He did, yes.

23 Q. Okay. You said that you don't know how many

1 conversations you had in private with the sheriff
2 during the five days of your trial, but do you
3 know if there were more than one conversation?

4 A. Yes, there was more than one conversation.

5 Q. Were there more than two?

6 A. I would say yeah. I would say that he was there
7 -- if he was there for four days, I talked to
8 him, saying hello to him, four times.

9 Q. Okay.

10 MR. D'AQUINO: But he's asking you about
11 conversations, not just saying hello.

12 THE WITNESS: I don't recall what kind of
13 conversations -- the conversations I had with the
14 sheriff, I don't recall.

15 BY MR. GLAZER:

16 Q. Did you speak to the sheriff privately each and
17 every day that he was present at your trial?

18 A. I don't recall.

19 Q. Were there ever conversations between you and the
20 sheriff and Mr. Personius?

21 A. Were there ever --

22 Q. Let me ask you a better question.

23 A. Sure.

1 Q. I'm talking about anytime, not just the five days
2 of trial. Was there ever a time when you and
3 Sheriff Howard and Mr. Personius had a
4 conversation together, just the three of you?

5 A. I don't recall if that occurred.

6 Q. You don't recall?

7 A. I don't recall.

8 Q. Do you recall if you and Mr. Personius and
9 Sheriff Howard ever spoke together during the
10 five days of your trial?

11 A. I mean, I would say yes, we probably did.

12 Q. What did you talk about?

13 A. I don't recall what we talked about aside from
14 saying hello or if my attorney said hello to him.
15 I don't recall conversations. It was a pretty
16 chaotic week. I wasn't focused on -- I don't
17 recall conversations that we had. I honestly
18 can't tell you. I don't recall.

19 Q. Did Mr. Personius ever speak privately with Mr.
20 Personius? I'm sorry. That's the same person.
21 Did Mr. Personius ever speak privately with
22 Sheriff Howard?

23 A. I'm not sure.

1 Q. Did you ever have conversation in private with
2 the sheriff, Deputy Flowers and Mr. Personius?

3 A. Not that I recall, no.

4 Q. Did you ever have conversation privately with
5 Mr. Flowers and his attorney?

6 A. Not that I recall, no. There was -- pretty much
7 once the situation started, there was no
8 conversation with Deputy Flowers in regards to
9 the series of events that you're talking about.

10 Q. Let me ask you about that. Did you speak to
11 Deputy Flowers at all during the course of your
12 five-day trial in September of 2019?

13 A. I did not, no.

14 Q. Did you speak to him at all on the phone or text
15 with him?

16 A. I did not, no. At that point in time, those five
17 days, is that the question you're asking me?

18 Q. Correct.

19 A. I just want to make -- okay. Yes. The answer is
20 no.

21 Q. Just so that we have a clear record, there were a
22 lot of yeses and nos there --

23 A. I understand that. Just that your question, I

1 apologize, was kind of open-ended and I just want
2 to clarify.

3 Q. Let me clarify it for you so that there's no
4 confusion. Your testimony is that you did not
5 speak to Deputy Flowers in any form from
6 September the 23rd of '19 until -- I'm sorry,
7 from September 17th of '19 to September the 23rd
8 of '19, is that fair?

9 A. I will -- that is fair, and it was probably
10 longer than that, yes.

11 Q. Okay.

12 MR. D'AQUINO: Can we go off the record for a second?

13 MR. GLAZER: Sure.

14 THE VIDEOGRAPHER: Two-forty-four p.m. Going off the
15 record.

16 (Whereupon, a short recess was then taken.)

17 THE VIDEOGRAPHER: Two-fifty-two p.m. We are back on
18 the record.

19 MR. D'AQUINO: Can I, before you start, Mr. Glazer,
20 just use this moment to again confirm that no one
21 participating in this Zoom call has or will audio
22 or videotape any part of this other than the
23 videographer?

1 Everyone agree?

2 MR. GLAZER: Yes.

3 THE WITNESS: Yes.

4 MR. BLOOM: Confirm.

5 MR. D'AQUINO: Thank you. And both Mr. Belsitos
6 confirming?

7 MR. BLOOM: Yes. On behalf of Mr. Belsito, yes.

8 MR. D'AQUINO: And it looks like Nicholas Belsito is
9 no longer on. Is that correct?

10 MR. GLAZER: It looks like he's muted. I don't know
11 if he can still hear us. I know he was leaving
12 for work at three.

13 Nick, if you're on the call, can you unmute
14 and confirm that you're not recording the
15 proceedings in any medium whatsoever?

16 NICHOLAS BELSITO: Sorry about that. Can you hear
17 me?

18 MR. GLAZER: Yes. Go ahead.

19 NICHOLAS BELSITO: Yes. I am not recording, and I'm
20 actually about to leave for work.

21 MR. GLAZER: Okay. Have a good day.

22 MR. D'AQUINO: Thanks, Mr. Glazer. Sorry for the
23 interruption.

1 MR. GLAZER: No, sir, no problem.

2 (Whereupon, Nicholas Belsito left the remote
3 deposition.)

4 MR. GLAZER: Sue Ann, could I have the last question,
5 please?

6 (Whereupon, the above-requested question and
7 answer at page 112, lines 3 through 10, were then
8 read back by the reporter.)

9 BY MR. GLAZER:

10 Q. Mr. Achtyl, I'm going to ask you some questions
11 now about Deputy Flowers, and then a few
12 questions about the sheriff and Deputy Flowers
13 probably a little bit later on. And I apologize
14 if some of it is repetitive because we sort of
15 veered off a second ago, but I'll do my best to
16 keep it from being so.

17 A. Okay.

18 Q. We talked about the sheriff being present at your
19 criminal trial. Did you see the sheriff talk to
20 the prosecutors at all during the criminal trial?

21 A. Not that I recall, no.

22 Q. All right. And I don't remember how Orchard Park
23 Court is set up, but were you on the left side of

1 the courtroom if you're facing the judge?

2 A. Facing the judge, yes, I was on the left side.

3 Q. And that would be the side furthest from the
4 jury, is that correct?

5 A. Correct.

6 Q. Okay. And when the sheriff sat in the courtroom
7 during the time that he was there, was he sitting
8 on your side of the courtroom?

9 A. I don't recall, because my, for the most part, my
10 back was to the audience and I was facing the
11 judge and the jury. I'm not sure where people
12 sat. I didn't even realize that there was like a
13 -- what you're trying to say is like sides. I
14 didn't realize there was sides in a courtroom. I
15 thought it was just one -- from what I recall, I
16 thought it was just all one courtroom.

17 Q. Do you remember seeing him sitting at all in the
18 gallery, at any point during the trial?

19 A. I remember maybe once he was sitting behind me, I
20 would say positioned behind me. I don't recall
21 how far back or where he was at. I don't recall.

22 Q. So behind you on your side of the courtroom?

23 A. If there's a side of the courtroom that you're

1 referring to, he was sitting behind me, yes.

2 Q. Let me try to make it a little bit more clear.

3 If you would have stood up and turned around and
4 faced directly toward the back of the courtroom,
5 would you have seen the sheriff?

6 A. Yes.

7 Q. How long have you known James Flowers?

8 A. I don't recall a certain time frame. I probably
9 would have known of James Flowers when he was
10 initially hired. I never worked with Jim Flowers
11 aside from -- that I can recall, I never worked
12 with Jim Flowers aside from the stadium events.

13 Q. Okay. You indicated that you think you would
14 have known of him when he was hired. Is there a
15 particular reason that you would have known of
16 him when he was hired?

17 A. The only reason I would say that is you just kind
18 of keep -- you just kind of know who new people
19 are, who's coming and who's going, where people
20 were. So generally speaking, yes, I would have
21 probably known of him. And I'm not sure, I don't
22 recall when he was hired.

23 Q. Do you know what general time period in which he

1 was hired, was it ten years ago, fifteen, twenty,
2 something else?

3 A. From which date are we speaking? I'm sorry.

4 Q. I'm just asking you if you know approximately
5 when Mr. Flowers became an Erie County Sheriff's
6 Deputy.

7 A. I don't know of the exact date. Possibly 2000 --
8 maybe '8, 2009, somewhere in that time frame.
9 I'm not sure.

10 Q. Do you remember how long after he became employed
11 by the sheriff's department that the two of you
12 met?

13 A. I do not, no.

14 Q. Do you remember approximately when the two of you
15 met?

16 A. I do not, no.

17 Q. Did you ever work together aside from Bills
18 games?

19 A. Not that I'm aware of, no.

20 Q. Do you know what his assignment was when he
21 started working for the sheriff's, whenever he
22 started working?

23 A. I do not, no.

1 Q. At any time have you socialized with Mr. Flowers
2 outside of work?

3 A. No. Not that I'm aware of, no.

4 Q. Well, I'm going to follow up because you said not
5 that you're aware of. Is there a reason that you
6 wouldn't be aware of socializing with Mr. Flowers
7 outside of work if you'd done that?

8 A. When you are saying socializing, I'm not sure if
9 Mr. Flowers was at -- I never socialized with Mr.
10 Flowers outside of work. Could he have been at a
11 union meeting or something? Yes.

12 Q. That's fair. That's fair. Let me ask you a
13 better question. Without regard to whether you
14 guys were at a party together with a hundred
15 people there, have you guys ever socialized with
16 just the two of you or just the two of you and
17 your spouses or in a tight, small group?

18 A. Not that I recall, no.

19 Q. Prior to December the 3rd of 2017, had you ever
20 spoken to Deputy Flowers on the phone?

21 A. Prior to December 3rd, yes.

22 Q. Okay. Did you have his cell phone number prior
23 to December the 3rd of 2017?

1 A. Yes.

2 Q. Do you know his cell phone number offhand just
3 sitting here?

4 A. I do not, no.

5 Q. Do you have his cell phone number saved in your
6 phone?

7 A. I believe I do, yes.

8 Q. Did you ever call Deputy Flowers on his cell
9 prior to December the 3rd of '17?

10 A. Prior to December 3rd of 2017, yes.

11 Q. Did you ever text with him prior to December the
12 3rd of 2017?

13 A. Yes. I'm just trying to understand. I mean,
14 your question, just to specify, we worked
15 together at the stadium, so there was work
16 related issues we would discuss during working
17 hours, yes.

18 Q. That's fine. I'm not trying to confuse you. My
19 question simply is, did you guys communicate via
20 cell phone prior to December the 3rd of '17
21 without regard to whether it was work related?

22 A. Yes.

23 Q. Okay. Did you ever communicate via cell phone

1 prior to December the 3rd of 2017 for un -- I
2 should say, for non-work related reasons?

3 A. No.

4 Q. Have you called Deputy Flowers on the telephone,
5 on the cell phone, since December the 3rd of
6 2017?

7 A. Yes.

8 Q. Has he called you on the cell phone since
9 December of 2017?

10 A. I'm not sure. I'm not sure.

11 Q. Have the two of you texted back and forth since
12 December 3rd of 2017?

13 A. Since December -- yes. Yeah. There's a
14 possibility, yes.

15 Q. And is it your testimony that all of these calls
16 and texts were work related?

17 A. Yes.

18 Q. And I messed this up before and I apologize, but
19 your criminal trial was the week of September the
20 23rd -- I'm sorry, September the 17th -- I don't
21 know why I can't get that right. I'll start
22 again. Your criminal trial was the week of
23 September the 17th of 2019, is that correct?

1 A. Now that you have me thinking this, I believe
2 that is correct.

3 Q. I should have it written down in front of me, but
4 it's in another folder.

5 A. I believe those were the dates. You had said
6 something about the 26th or 27th earlier.

7 Q. With the understanding that I'm not trying to
8 trip you up --

9 A. I understand.

10 Q. Okay.

11 A. I just don't want to -- fair. I want to make
12 sure I'm accurate and correct with what you're
13 asking me.

14 Q. For maybe the third time in the last, I don't
15 know, two and a half, three hours, we're making
16 Sue Ann mad.

17 So let's get back to it. Is it fair to say
18 that if I told you that the trial was 9/17 of '19
19 to 9/23 of '19, do you have any reason to
20 disagree with that?

21 A. I do not, no.

22 Q. And you've indicated that you didn't speak to
23 Officer Flowers or Deputy Flowers at all during

1 that week, either in person, on the telephone or
2 via text, is that fair?

3 A. Yes, that's fair.

4 Q. Okay. Prior to September 17th of 2019, did you
5 discuss the upcoming trial with Deputy Flowers?

6 A. I'm sorry. Could you just rephrase the question?
7 Not rephrase it but repeat it in regards to the
8 dates? I'm sorry. I didn't catch the dates.

9 Q. Prior to the first day of your trial, did you
10 discuss the trial with Deputy Flowers?

11 A. No, I did not.

12 Q. Prior to the first day of your trial, did your
13 attorney discuss the matter with Deputy Flowers?

14 A. Not that I'm aware of, no.

15 Q. Prior to the first day of your criminal trial,
16 did Deputy Flowers discuss the matter with
17 Sheriff Howard that you're aware of?

18 A. Not that I'm aware of.

19 Q. Has there ever been a time when you and Deputy
20 Flowers discussed the criminal trial?

21 A. No.

22 Q. Do you have a cell phone?

23 A. Do I have a cell phone?

1 Q. Yes.

2 A. Yes, I do.

3 Q. Do you have a home phone?

4 A. I do.

5 Q. Could I have the cell phone number and provider,
6 please?

7 A. It's Verizon and the cell phone number is
8 716-574-0829.

9 Q. And the home phone number and provider?

10 A. I believe that's Verizon also and it's
11 716-649-1487.

12 Q. When was the first Bills game you ever worked?

13 A. I believe it would have been 2000 or 2001.

14 Q. So that would have been well before Deputy
15 Flowers was employed by the sheriff's department?

16 A. Yes.

17 Q. Would you tell me how it was that you came to
18 work Bills games? And here's what I mean. Did
19 you request to work the games, were you compelled
20 or something else?

21 A. From what I recall, the Bills games were
22 considered an overtime deal. I believe it was
23 frowned upon at that time if you didn't work

1 them. I was called last minute to fill in for a
2 deputy that I believe had called off sick, if I
3 recall correctly. I believe the phone call was
4 ten minutes prior to the start of the shift.

5 Q. Was it something that you wanted to do because of
6 the overtime?

7 A. Yeah. Yes.

8 Q. Okay. I'm not asking you about your personal
9 income right now because it's probably not
10 appropriate and I'm not looking to bust your
11 chops, but can you give me an indication of what
12 you get paid for overtime in terms of is it time
13 and a half, is it double time or something else?

14 A. I believe it's time and a half for the stadium
15 detail.

16 Q. And incidentally, I forgot to ask you, the
17 lawsuit that you brought regarding Mr. Kelly and
18 the rear-end DWI thing, did you receive a
19 settlement in that case?

20 A. There was a settlement received, yes.

21 Q. Okay. Do you recall how much it was?

22 MR. D'AQUINO: Hold on a second. I'm really going to
23 direct him not to answer. This is getting into a

1 personal matter that has nothing to do with the
2 lawsuit.

3 MR. GLAZER: Okay. Will you just index that, Miss
4 Simonin? Thank you.

5 MR. D'AQUINO: While we're -- I'm hearing a lot of
6 feedback.

7 (Discussion off the record.)

8 MR. D'AQUINO: What I was about to say was, on the
9 record, if there's any matter you need to call
10 the judge about, we should do so while the judge
11 is still in chambers today. It's now three-ten
12 p.m. I just don't want to get past when he's not
13 there and not be able to get a ruling.

14 MR. GLAZER: Well, you know, I think it's better off
15 if I just move on, and because if something else
16 arises I'd rather just have a list. You know
17 what I mean? And if there's a situation where we
18 have to have another Zoom call, it's going to be
19 five minutes. You know what I mean? And I
20 would, of course, do it at your and your client's
21 convenience.

22 MR. D'AQUINO: Okay. Fair enough. I get you. That
23 covers it.

1 MR. GLAZER: Thank you.

2 We were talking about overtime. Was there a
3 question and answer, Miss Simonin, about the --
4 can you read it to me, please?

5 (Whereupon, the above-requested question and
6 answer at page 124, lines 8 through 15, were then
7 read back by the reporter.)

8 BY MR. GLAZER:

9 Q. Mr. Achtyl, do you know how many Bills games
10 you've worked in total?

11 A. I do not have a total number, but I rarely never
12 not worked a Bills game unless I was injured or
13 something and not working. I worked pretty much
14 all the Bills games.

15 Q. Okay. So would it be a fair statement, then, to
16 say that you worked most of the home games from
17 the time you started in early 2000's until 12/3
18 of '17?

19 A. Yes.

20 Q. Okay. So if we multiply eight, give or take, by
21 twenty years, we'd get approximately a hundred
22 and sixty, give or take?

23 A. I would say it's less than a hundred and twenty,

1 because you're multiplying by twenty. It was
2 eighteen or nineteen years, yes.

3 Q. Fair enough. Over a hundred?

4 A. If the math adds up to over a hundred for those
5 number of years, I would say yes.

6 Q. Had you ever made an arrest at a Bills game prior
7 to December the 3rd of 2017?

8 A. Yes.

9 Q. Can you approximate how many arrests you've made
10 over the years at Bills games since you started
11 working them?

12 A. I'm really not sure of an approximate number. It
13 was numerous. Hundred or hundreds maybe.
14 Depending on the position at the stadium that you
15 were doing would determine that answer to your
16 question.

17 Q. I understand. If you're working where all the
18 drunks are, you arrest more people, fair?

19 A. Well, that's not a fair question because there's
20 usually drunks all over the place at the stadium.
21 I would have to more elaborate in regards to the
22 specific assignment at the stadium itself. If
23 you need me --

1 Q. I don't need you to. We can move on.

2 A. Okay. Fair enough.

3 Q. What's the most serious offense you've ever
4 arrested somebody for at a Bills game, if you can
5 recall?

6 A. I was dragged down the road, Abbott Road, in
7 front of the stadium by an intoxicated female
8 driver who was urinating in the middle of Abbott
9 Road, who was not responding to questions. And
10 in an attempt, while traffic was stopped, to get
11 her off the roadway --

12 Q. I was just asking about the offense. What did
13 you charge her with?

14 A. It was a DWI offense.

15 Q. So a misdemeanor?

16 MR. D'AQUINO: Excuse me. Can he finish his answer?
17 You just cut him off mid answer.

18 MR. GLAZER: I'm just trying to get the answer to my
19 question, but okay. Go ahead.

20 MR. D'AQUINO: Well, sure, but you've got to let him
21 answer. You can't just say I don't want to hear
22 the rest of it.

23 MR. GLAZER: I understand. We're going to be here

1 all day if I don't get specific answers to my
2 questions, but okay.

3 BY MR. GLAZER:

4 Q. If you want to continue, go ahead.

5 A. I'm just going to leave it at that I was dragged
6 down the road, it was a serious offense, she was
7 charged with DWI. And I'll leave it at that.

8 Q. So if I ask you what offense is the most serious
9 offense you ever charged at a Bills game, the
10 answer is DWI, is that fair?

11 A. I would say there would be other charges, not
12 just DWI. Assaults, harassments, disorderly
13 conducts. There's a multitude of different
14 offenses that you would charge at the stadium.

15 Q. Let me ask it another way. Have you ever charged
16 anyone with a felony at the stadium?

17 A. I would have to say yes.

18 Q. What kind of felony?

19 A. I would say possibly could have been a DWI type
20 of felony. I don't recall. I don't recall the
21 specifics of each and every incident that
22 occurred at the stadium. There's some that stand
23 out, yes. Could I have charged a felony at the

1 stadium? Yes.

2 Q. So it sounds like the answer is maybe you charged
3 a felony, is that fair?

4 A. I would say most likely, yes.

5 Q. Prior to December the 3rd of 2017, had you ever
6 arrested someone at a Bills game solely because
7 that person used a curse word toward you?

8 A. No.

9 Q. And we agree that in New York State it's not
10 against the law to curse at a law enforcement
11 officer, is that fair?

12 A. Under those set of circumstances, just cursing,
13 it's a no.

14 Q. And you got a little wordy there on me, so I just
15 want to make sure --

16 A. I apologize. I'm just trying to -- go ahead.

17 Q. I'm just asking, can we agree that in New York
18 State it's not illegal in any fashion to curse at
19 a law enforcement officer solely?

20 A. Yes.

21 Q. Let's get to December the 3rd of 2017. You were
22 assigned to work the Bills game that day, is that
23 fair?

1 A. Yes.

2 Q. And Deputy Flowers was also assigned to work the
3 game, is that fair?

4 A. He was assigned as my partner, yes.

5 Q. Did you at some point have to go and pick up a
6 sheriff's vehicle?

7 A. Yes.

8 Q. Did you drive together with Deputy Flowers to do
9 that or did you arrive separately?

10 A. I believe at that point in time we were assigned
11 a car out of Chestnut Ridge Park, and we would
12 meet at the start of our shift to get into
13 service in that car.

14 Q. Okay. So to the best of your recollection, on
15 December the 3rd of '17, you and Flowers would
16 have met at Chestnut Ridge and picked up your
17 cruiser at that point?

18 A. Yes.

19 Q. Do you know what time you would have done that,
20 approximately?

21 A. Probably -- the detail started at ten a.m., so I
22 would have to say probably within the, plus or
23 minus, five to, five after range.

1 Q. Do you know how many deputies are typically
2 assigned to what is now New Era Field for a Bills
3 game?

4 MR. D'AQUINO: What is now Highmark.

5 MR. GLAZER: Oh, yeah. You're right. Good point.
6 Boy, what a crummy Bills fan.

7 BY MR. GLAZER:

8 Q. Do you know -- well, why don't you just answer
9 with the information that Mr. D'Aquino gave us.

10 A. I do not, no.

11 Q. Is it a hundred, two hundred, more?

12 A. There are separate details. There is an outside
13 detail that all the road patrol deputies work at,
14 and then there's an inside detail that holding
15 center deputies, correctional officers, various
16 other police officers from other agencies work
17 at. I do not know the number combined. The
18 outside detail, roughly seventy-five to a
19 hundred.

20 Q. Okay. And were you the outside detail on 12/3 of
21 '17?

22 A. Yes.

23 Q. Had you worked Bills games prior to December the

1 3rd of '17 with Deputy Flowers?

2 A. Yes.

3 Q. Do you know how many you'd worked with him prior
4 to December the 3rd of '17?

5 A. I do not know a number. We were usually assigned
6 together as a partner. I'm not sure of an exact
7 number or even an estimate. I'm not sure when he
8 started working the detail in regards to working
9 with me as a partner.

10 Q. Do you know if it was more or less than five?

11 A. I would say it would be around maybe five years,
12 maybe a little less. I'm not absolutely sure.

13 Q. So we can agree that it was, give or take, five
14 years of home games that you worked with Flowers
15 prior to December the 3rd of '17?

16 A. From what I recall, yes.

17 Q. When you and Flowers got to what was New Era
18 Field on December the 3rd of '17, were the two of
19 you in an Erie County Sheriff's Department
20 vehicle?

21 A. In a marked patrol unit, yes.

22 Q. And I'll call it a cruiser. I don't know if it's
23 called something else because it's an SUV, but is

1 a cruiser an appropriate term for that?

2 A. I would say marked police unit, yes.

3 Q. Marked police unit. Okay. I'll use your term.

4 Do you recall if you had worked the day before,
5 which would have been 12/2 of '17?

6 A. I do not recall. There's a good possibility. We
7 worked every other weekends. And there's a
8 possibility that if I did work the night before,
9 normally I would take a couple hours off to go
10 home and sleep.

11 Q. So if you -- go ahead. I'm sorry.

12 A. For some -- to get some sleep.

13 Q. If you had worked the night before, what would
14 have been the shift?

15 A. The shift that I was assigned to was six p.m. to
16 six a.m., and it would have been Friday, Saturday
17 and Sunday. The detail normally would start at
18 ten a.m. unless it was an oddball time, then you
19 would have to actually utilize your time to work
20 overtime, put it I guess that way.

21 Q. If you worked the night before, you get off at
22 six a.m., you've got to get home, get some sleep
23 and get to Chestnut Ridge by ten, is that fair?

1 A. Yes.

2 Q. So you had to be tired, true?

3 A. Yes. And then normally, as I indicated earlier,
4 I would take some paid time off to go home early
5 to get -- try to get some sleep, yes. The
6 weekends you worked, it was a difficult thing to
7 do under the set of circumstances.

8 Q. Do you think being tired made you quick to anger?

9 A. I would say no. I would say not being tired made
10 me quick to anger, no.

11 Q. I'm sort of confused by your answer. We've
12 established that you probably were tired given
13 the shift that you worked, is that fair?

14 A. Yes.

15 Q. So I'm asking you, when you got to the stadium a
16 few hours later on 12/3 of '17, do you think the
17 fact that you had gotten very little sleep made
18 you quick to anger?

19 A. I don't want -- how can I -- I'm going to give
20 you this answer. I don't want to answer the
21 question because I'm not sure if I worked that
22 weekend. If I worked the night before, I'm not
23 sure what time I went home. As for in regards to

1 if I was tired and angry or not, I just can't
2 give you that answer. I don't recall.

3 Q. Are you a guy that needs eight hours or can you
4 function on less?

5 A. I can function on under less hours. Numerous
6 years, as we discussed earlier, I had part-time
7 jobs, full-time jobs, and had always been a hard
8 worker I guess you could say.

9 Q. You're a human being. Does lack of sleep affect
10 you in any way whatsoever?

11 A. It could, yes.

12 MR. D'AQUINO: I think we're getting a little far
13 afield just with respect to that last question.
14 Maybe you can just get back to the issue of the
15 weekend?

16 MR. GLAZER: That's fine.

17 MR. D'AQUINO: I think all he was trying to say was
18 he wasn't sure if he was tired or not because he
19 wasn't sure if he worked before.

20 MR. GLAZER: Okay. Well, his answer is on the
21 record, so I'll move on from that particular
22 line.

23 BY MR. GLAZER:

1 Q. Are you a person that is quick to anger if you
2 don't get enough sleep?

3 A. I would say no, I do not anger quickly if I don't
4 get enough sleep, depending on your idea of
5 what's enough sleep.

6 Q. I'm talking about you personally. It sounds like
7 you hesitated a little bit. So for you
8 personally, if you don't get enough sleep, do you
9 become more quick to anger?

10 MR. D'AQUINO: I'm going to object to it sounds like
11 you hesitated a little bit, and ask that that be
12 stricken. That's my only comment.

13 BY MR. GLAZER:

14 Q. I'm just talking about you personally, Mr.
15 Achtyl.

16 A. At times if I'm awoken two minutes after I fall
17 asleep, I can be a little upset, yes. If I fall
18 asleep and I sleep for a short period of time,
19 no, I am usually not easy to be angered.

20 Q. When you picked up the marked patrol unit on
21 December the 3rd of '17, do you typically do a
22 walk-around to make sure there's no damage to the
23 vehicle?

1 A. Yes.

2 Q. Can you tell me in general terms what that
3 walk-around entails?

4 A. Well, at the start of any shift you do a
5 walk-around of the vehicle, make sure there's no
6 damage. You ensure that the equipment is
7 operating properly. You ensure that you have the
8 necessary equipment, whether it's in the glove
9 box or the trunk of the vehicle. You ensure that
10 there's nothing that's left in the back of the
11 vehicle. You do a quick check of everything.
12 It's for officer safety, it's for your own safety
13 to ensure there's no previous damage and to make
14 sure everything is working properly.

15 Q. Can we agree that there was no previous damage to
16 your vehicle when you picked it up on 12/3 of '17
17 before you got to the Bills stadium?

18 A. From what I recall, there was no damage to that
19 patrol car, not from what I can recall.

20 Q. You know what I'm getting at. Was there a dent
21 in the right front fender when you picked up the
22 vehicle?

23 A. There was not a dent in the right front fender.

1 Q. So you and Deputy Flowers get to whatever the
2 name of the stadium was on 12/3 of '17 together
3 in a marked patrol vehicle, is that correct?

4 A. Yes.

5 Q. Do you know what time you got there?

6 A. The usual routine would be to get to the area,
7 let the dispatch at the stadium know that we're
8 in our general area. Normally we were assigned
9 to the same location, being the bus lot. And
10 then we would try to grab some coffee and some
11 breakfast from Tim Horton's and then get -- you
12 know, which is across the street from the
13 stadium, and then be back in the bus lot.

14 Q. Were you assigned to the bus lot on 12/3 of '17?

15 A. Yes.

16 Q. And do you know what time you had finished up
17 with all the coffee and all that stuff and been
18 at the stadium ready to work?

19 A. I don't recall a specific time. I would say
20 sometime between maybe ten-thirty-ish to eleven,
21 sometime in that time frame.

22 Q. Could you describe for us where the bus lot is
23 relative to the stadium?

1 A. It would be south of the stadium, it would be
2 across the street on Abbott Road.

3 Q. So after you had gotten the coffee done and after
4 you had gotten to the stadium, did you at some
5 point park your vehicle?

6 A. No. We're a patrol unit, so we remain inside our
7 vehicle unless we need to exit it for a reason.

8 Q. Well, I suppose what I meant was, did you move
9 your vehicle to a certain location and stop it?

10 A. I would say normally we would be within the bus
11 lot, in those general parking lot areas
12 somewhere, ready to respond to anything we needed
13 to respond to.

14 Q. In the parking lot?

15 A. Yes.

16 Q. So do you get there and you sit in your vehicle
17 until there's reason to move?

18 A. You patrol around. You're assigned a specific
19 zone, there's four cars assigned to patrol.

20 Q. When you say -- go ahead. I'm sorry. Go ahead.

21 A. They are two-man cars, they're assigned to the
22 north end, the south end and then the opposite
23 end of the stadium. So they try to make it into

1 quadrants, that each two-man car is specific to
2 that area.

3 Q. Okay.

4 A. So you have an assigned area to try to stay in
5 unless something is happening where you need to
6 leave that area or if you need to assist a deputy
7 who's directing traffic or is on some sort of
8 other patrol.

9 Q. So when you say you patrol, do you get out of the
10 vehicle and walk around, do you stay in the
11 vehicle, do you drive the vehicle around or
12 something else?

13 A. It's a combination of what you've just stated.
14 Sometimes, depending on the circumstances, you'd
15 get out and walk around, if it's too heavy to
16 drive through. You would try not to venture too
17 far from your patrol car because you may need to
18 assist somebody else. And again, you still need
19 to have a presence in the crowd. So to answer --

20 Q. When you --

21 A. I'm sorry.

22 Q. Go ahead.

23 A. To answer your question, it's a little bit of

1 both. You're in the car, you're out walking
2 around, you're doing both of what you had stated.

3 Q. We're going to talk more about this in a little
4 bit. And I think we're moving along here and
5 shouldn't be a ton longer. But can we agree that
6 at some point Mr. Belsito came up to your patrol
7 vehicle and knocked on your window?

8 A. Yes, he did.

9 Q. Okay. Can you give me an estimate of how long
10 you were parked in that same spot for prior to
11 the time that Mr. Belsito came up and tapped on
12 your window?

13 A. Well, from what I recall, a few minutes earlier,
14 couple minutes earlier, we had arrested his
15 acquaintance, friend, somebody who was observed
16 with him, that had been seen by an undercover
17 deputy that was throwing a beer can and throwing
18 cans of beer into the crowd of people. And the
19 crowd of people prior to this was very
20 rambunctious, if not almost close to riotous,
21 being a riot. I recall that there was a lady, a
22 drunk lady, who punched a sheriff's horse that
23 day.

1 Q. I apologize, but I've got to interrupt you. It's
2 just so non-responsive.

3 A. Sure.

4 MR. GLAZER: Could you please read back my question?

5 This question should take a one-word answer.

6 THE WITNESS: The answer to your question is yes.

7 MR. GLAZER: It's not responsive.

8 Could you please read the question? He
9 doesn't even know what the question was.

10 THE WITNESS: I know what the question is.

11 MR. GLAZER: Okay. We'll see if yes is responsive.

12 Go ahead, please.

13 (Whereupon, the above-requested question at
14 page 142, line 9, was then read back by the
15 reporter.)

16 BY MR. GLAZER:

17 Q. Can you answer that question?

18 A. The vehicle was parked, I'm not sure how long the
19 vehicle was parked there. I do not know a time
20 frame.

21 Q. More or less than five minutes?

22 A. More.

23 Q. More or less than ten minutes?

1 A. There was numerous incidents going on, and I
2 would say it was definitely more than ten or
3 fifteen minutes.

4 Q. That your car was parked in that spot before
5 Mr. --

6 A. That spot, yes.

7 Q. Okay. You've got to let me finish my question.

8 A. Sorry.

9 Q. It was more than ten or fifteen minutes that your
10 vehicle was parked in that location before Mr.
11 Belsito came up and tapped on your window, is
12 that true?

13 A. From what I recall, yes.

14 Q. Okay. Was it more than a half hour?

15 A. I don't believe it was that long. I'm not sure.

16 Q. So you gave me a bunch of information about your
17 surroundings at that time, and I want to ask you
18 about that now.

19 A. Sure.

20 Q. Were your surroundings loud?

21 A. Yes.

22 Q. I believe you referred to them as almost riotous?

23 A. Yes.

1 Q. Okay. Was it very crowded?

2 A. Yes.

3 Q. How crowded was it?

4 A. At a certain point in time it was -- I don't know
5 how to describe it. It was a sea of people. It
6 was -- various spots, there was a lot of activity
7 going on.

8 Q. Thousands of people?

9 A. Oh, easily, yes.

10 Q. And were there different groups of people sort of
11 congregating together in different places?

12 A. Yes.

13 Q. And did several different groups of people have
14 their own music playing?

15 A. Yes.

16 Q. Which I assume led to the noise. Correct?

17 A. I would have to say yes, aside from just in
18 general the thousands of people in that area, the
19 music, yes.

20 Q. So there were a ton of contributing factors to
21 how raucous the atmosphere was, fair?

22 A. Yes.

23 Q. Hard to hear?

1 A. I guess your question is a little open. Hard to
2 hear --

3 Q. Let me ask you a different question.

4 A. Sure.

5 Q. You just told us how riotous and loud and packed
6 it was. Okay?

7 A. Sure.

8 Q. Do all those factors cause a person to have a
9 tougher time hearing or is it easier to hear when
10 there's a riot going on?

11 A. It's a tougher time in general, yes.

12 Q. That's fine. Let's talk about your weaponry and
13 gear. Could you tell me all the weapons that you
14 had on your physical person just prior to the
15 incident?

16 A. I had a departmental assigned Glock handgun,
17 which consisted of I believe three magazines. I
18 had a wooden baton. I had a canister of pepper
19 spray on my belt, handcuffs. Aside from (sic)
20 weapons, that would be it.

21 Q. Did you have any backup weapon?

22 A. No.

23 Q. Any vehicle shotgun or weapon that stays with the

1 vehicle?

2 A. I believe there was -- I don't recall if there
3 was a shotgun in the vehicle that day, or a
4 rifle. There may very well have been a rifle in
5 the vehicle, yes.

6 Q. Was the Glock a nine millimeter pistol?

7 A. Forty caliber.

8 Q. Let's talk briefly about the baton. You said a
9 wooden baton, is that correct?

10 A. Correct.

11 Q. Does the sheriff's department require you to
12 carry a certain kind of baton?

13 A. It's a standardized baton. And then you can
14 carry an extendable baton if you were trained in
15 the extendable baton. So there's I guess
16 different options, to answer your question
17 properly.

18 Q. Is your -- well, strike that. Let me ask you,
19 was the baton that you were carrying on 12/3 of
20 '17 consistent with batons that you are allowed
21 to carry as a member of the Erie County Sheriff's
22 Department?

23 A. Yes.

1 Q. Are you able to describe the baton for me in
2 somewhat more detail in terms of thickness or
3 length or anything else?

4 A. Length, maybe, as an estimate here, less --
5 around two feet maybe. I'm not sure of the
6 length. Roughly twenty-four inches maybe, maybe
7 a little bit more, maybe a little bit less.
8 Somewhere between a quarter and a half dollar in
9 diameter in size. One end consisted of a handle,
10 like a grip, and a piece of leather through there
11 as like a loop to attempt to obviously help you
12 from losing control of the baton.

13 Q. Is it made of solid wood?

14 A. Yes.

15 Q. Do you know what kind of wood?

16 A. I do not, no.

17 Q. Have you always carried the same baton?

18 A. Yes. For the most part, yes.

19 Q. Do you have a nickname for the baton?

20 A. I do not, no.

21 Q. Have you ever referred to it by any other name?

22 A. Aside from -- I'm sorry. Your question, aside
23 from the name of baton?

1 Q. Correct.

2 A. Stick, wooden stick.

3 MR. GLAZER: Okay. Where is that coming from, does
4 anybody know?

5 (Discussion off the record.)

6 BY MR. GLAZER:

7 Q. You indicated, Mr. Achtyl, that you may have
8 referred to your baton as some sort of stick, is
9 that true?

10 A. Yeah. Yes.

11 Q. Did you ever call it a sausage?

12 A. No.

13 Q. Are you sure about that?

14 A. I am positive about that.

15 Q. Showing you what's been marked Deposition Exhibit
16 11 for identification, I'll tell you it's the
17 body cam footage that you're extremely familiar
18 with. I'm going to show you what starts around
19 eighteen thirty-two at the upper right-hand
20 corner of the body cam footage.

21 (Whereupon, video footage was played.)

22 BY MR. GLAZER:

23 Q. Is that you right there, Deputy Achtyl?

1 A. That's me, yes.

2 (Whereupon, video footage was played.)

3 BY MR. GLAZER:

4 Q. When you said don't do it, what were you
5 referring to there?

6 A. Not sure.

7 Q. Let me ask you another question.

8 A. Sure.

9 Q. Are you referring to the fact that you heard
10 Deputy Flowers tell you not to get out of the
11 vehicle?

12 A. I don't recall Deputy Flowers telling me not to
13 get out of the vehicle.

14 Q. Do you recall Deputy Flowers saying nah ah ah
15 before you got out of the vehicle?

16 A. I do, yes.

17 Q. Let's get back to this snippet of film here. I'm
18 going to play it again.

19 (Whereupon, video footage was played.)

20 BY MR. GLAZER:

21 Q. Now I'm at eighteen thirty-one fifty-eight. Do
22 you see that on the upper right-hand corner?

23 A. Yes.

1 Q. Do you see yourself coming into view?

2 A. Yes.

3 Q. Who were you talking to at that time?

4 A. I'm not sure.

5 Q. Well, who was wearing the body cam?

6 A. Deputy Flowers is wearing the body cam. This is
7 Deputy Flowers' body cam footage.

8 Q. If I represent to you that this is Deputy
9 Flowers' body cam footage, would you be talking
10 to Deputy Flowers?

11 A. Yes.

12 Q. Okay. Let's play it.

13 (Whereupon, video footage was played.)

14 BY MR. GLAZER:

15 Q. Did you say I heard you, don't do it?

16 A. I didn't hear what I said. I heard I said don't
17 do it.

18 Q. Let's play it again.

19 (Whereupon, video footage was played.)

20 THE WITNESS: I heard don't do it.

21 BY MR. GLAZER:

22 Q. So you're representing under oath that you didn't
23 hear yourself say I heard you, don't do it?

1 A. I do not hear I heard you.

2 Q. Okay. Let's play a little more. We're now at
3 eighteen thirty-two o four.

4 (Whereupon, video footage was played.)

5 BY MR. GLAZER:

6 Q. Did you say don't eat the sausage this morning?

7 A. Yeah, I did.

8 Q. Okay. What were you referring to?

9 A. I was referring to the awful Tim Horton's sausage
10 sandwich that I had for breakfast.

11 Q. Okay. So when Deputy Flowers said to you don't
12 do it, and then you said don't do it, don't eat
13 the sausage, you were referring to sausage from
14 Tim Horton's?

15 A. Absolutely, yes.

16 Q. Okay. How did you pay for the sausage that you
17 got at Tim Horton's that morning?

18 A. Probably cash.

19 Q. Probably cash or definitely cash?

20 A. Definitely cash.

21 Q. Who paid?

22 A. I'm not sure. I would imagine I did or -- I'm
23 not sure.

1 Q. What exactly did you purchase at Tim Horton's?

2 A. Probably a sausage sandwich, most likely at that
3 time on a bagel, and most likely a large coffee,
4 double double.

5 Q. What about Deputy Flowers?

6 A. I don't recall what he purchased.

7 Q. Did he purchase anything?

8 A. I'm not sure.

9 Q. Do you remember if he had coffee that morning?

10 A. I don't recall.

11 Q. Would it have been typical for him to have coffee
12 and a sandwich?

13 A. Not necessarily, no. It depended on the -- his
14 work schedule I would say.

15 Q. I'll go back to Deposition Exhibit 11, starting
16 the video from eighteen thirty-one fifty. I'm
17 going to ask you to watch the video.

18 (Whereupon, video footage was played.)

19 BY MR. GLAZER:

20 Q. Did you hear Deputy Flowers at eighteen
21 thirty-two eighteen refer to you getting out of
22 the vehicle?

23 A. I did not catch that. I heard what I said.

1 Q. Okay. Did you hear anybody say anything about
2 Tim Horton's before you talked about eating the
3 sausage?

4 A. No.

5 Q. Ever hear anybody else from the sheriff's
6 department refer to a baton as a sausage?

7 A. No.

8 Q. I'm going to show you what's been marked as
9 Deposition Exhibit 6 for identification. Same as
10 always, can you see the top half of the first
11 page with an exhibit tab on the right?

12 A. Yes.

13 Q. Okay. Does it say police baton on the top?

14 A. Yes.

15 Q. Okay. I'm going to scroll down to where it says
16 policy and procedure. Do you see that?

17 A. I see policy and procedure, yes.

18 Q. Okay. Where it says policy, does it say it is
19 the policy of the Erie County Sheriff's Office
20 that the police baton be used in instances where
21 a non-lethal weapon is required and its use is
22 justified? Do you see that?

23 A. Yes.

1 Q. Did I read that properly?

2 A. You did, yes.

3 Q. And that applies to you, correct, when you were a
4 deputy sheriff?

5 A. Yes.

6 Q. Scrolling down to procedure. Do you see where it
7 says procedure?

8 A. Yes.

9 Q. Okay. Section one A, use of police baton, as a
10 supplement to the use of normal force where an
11 individual is resisting arrest or otherwise not
12 able to be subdued with mere physical force.

13 Do you see that?

14 A. Yes.

15 Q. Okay. Scrolling down to C. It is not
16 recommended, underlined, that the police baton be
17 used to strike an individual in the area of the
18 head, temple, back of neck, throat or spine.

19 Did I read that properly?

20 A. Yes, you did.

21 Q. Did that apply to you when you were a deputy
22 sheriff?

23 A. Yes, it did.

1 Q. In the course of your employment with the
2 sheriff's department, was it part of your job
3 duties to draft accusatory instruments in the
4 event that you made an arrest?

5 A. Yes.

6 Q. And would you agree that it's important to be
7 accurate when you draft accusatory instruments?

8 A. Yes.

9 Q. Would you agree with me that it's important to
10 include all of the details that you think are
11 relevant to an arrest?

12 A. Yes.

13 Q. Is it important to take your time in drafting
14 these accusatory instruments to make sure they're
15 correct?

16 A. Ideally, yes.

17 Q. When was the first time that you saw Mr. Belsito
18 on December 3rd of 2017?

19 A. During the arrest of his friend, acquaintance,
20 Mr. Lowry.

21 Q. When were you aware for the first time that
22 Belsito and Lowry were friends, is your term?

23 A. I'm not sure when I knew they were friends or

1 acquaintances, but Mr. Belsito was very
2 interested during the arrest of what was
3 happening to Mr. Lowry.

4 Q. So would it be fair to say, then, that during Mr.
5 Lowry's arrest you noticed that Mr. Belsito
6 appeared to be very interested in Mr. Lowry's
7 arrest?

8 A. Yes.

9 Q. Okay. When you say very interested, what exactly
10 did Mr. Belsito do to make you believe that he
11 was very interested?

12 A. Well, from what I recall, he reached into the
13 handcuffing area. He might have even touched Mr.
14 Lowry, and offered a plea I guess you could say,
15 that Mr. Lowry would not be arrested.

16 Q. You said he reached into the handcuffing area, is
17 that correct?

18 A. Yes.

19 Q. Would reaching into the handcuffing area be a
20 crime?

21 A. Yes. It could be construed as a crime, yes.

22 Q. What crime?

23 A. It would be -- obstructing it could be or in

1 different ways it could be resisting.

2 Q. Did you charge Mr. Belsito with obstructing or
3 resisting based upon reaching into the
4 handcuffing area?

5 A. I believe I did as the total set of
6 circumstances.

7 Q. What does that mean?

8 A. Well, Mr. Belsito had -- did certain actions
9 prior to him coming up to the patrol car window.

10 Q. All right. Well, I just asked you if you charged
11 Mr. Belsito with a crime relative to reaching
12 into the handcuffing area, and you said yes, is
13 that correct?

14 A. I did, yes.

15 Q. Okay. And you told me a few minutes ago that it
16 is important to include all of the details that
17 you believe are relevant to the offense when
18 drafting an accusatory, is that correct?

19 A. Yes.

20 Q. Did you mention anywhere in the accusatories that
21 you drafted that Mr. Belsito reached into the
22 handcuffing area?

23 A. Not that I'm aware of.

1 Q. Did you mention anywhere in your use of force
2 report that Mr. Belsito reached into the
3 handcuffing area?

4 A. Not that I recall.

5 Q. Can you see anywhere on Deputy Flowers' body cam
6 Mr. Belsito's hands reaching into the handcuffing
7 area?

8 MR. D'AQUINO: Are we talking about a different video
9 than he's been shown so far?

10 MR. GLAZER: I apologize. Let me ask a better
11 question.

12 BY MR. GLAZER:

13 Q. Does Deputy Flowers' body cam footage, which
14 you've told us you reviewed, show in any way Mr.
15 Belsito's hands reaching into the handcuffing
16 area?

17 A. From what I recall, his hand came forward towards
18 the area that Mr. Lowry was being handcuffed.

19 Q. Okay. I'm going to need to ask that question
20 again. Does the Flowers body cam footage in any
21 way show the hands of Mr. Belsito reaching into
22 what you've termed the handcuffing area?

23 A. I would have to see the video to recall.

1 Q. Refresh my recollection as to when is the last
2 time you saw the video?

3 A. When I saw the video?

4 Q. When was the last time?

5 A. At my trial, 2019.

6 Q. Okay. Let's play it for you.

7 Can you see the footage up there on the
8 screen?

9 A. I do not.

10 Q. Hold on one second.

11 Can you see it now?

12 A. I can see it now, yes.

13 Q. I'm going to scrub it back to one thirteen o
14 three on the lower left and seventeen nineteen
15 sixteen on the upper right. Do you see that?

16 A. I do.

17 Q. All right. And that's Mr. Lowry being arrested,
18 is that correct?

19 A. Correct.

20 Q. All right. Let's watch from here.

21 (Whereupon, video footage was played.)

22 BY MR. GLAZER:

23 Q. There's Mr. Belsito, correct?

1 A. Right.

2 Q. Okay.

3 (Whereupon, video footage was played.)

4 BY MR. GLAZER:

5 Q. Has he reached into the handcuffing area yet?

6 A. I'm not sure. I don't believe so.

7 (Whereupon, video footage was played.)

8 BY MR. GLAZER:

9 Q. Has he reached into the handcuffing area yet?

10 A. I would have to say not at this time, no.

11 Q. Because we can see your hands right there, is
12 that correct?

13 A. Yes, that's correct.

14 (Whereupon, video footage was played.)

15 BY MR. GLAZER:

16 Q. Has he reached into the handcuffing area yet?

17 A. Not on the video, no.

18 Q. Okay. And I'm at seventeen nineteen
19 twenty-eight.

20 (Whereupon, video footage was played.)

21 BY MR. GLAZER:

22 Q. Has he reached into the handcuffing area yet?

23 A. Not that I see, no. Not on the video.

1 Q. I'm at seventeen nineteen thirty-seven.

2 (Whereupon, video footage was played.)

3 BY MR. GLAZER:

4 Q. Okay. Has he reached into the handcuffing area
5 yet?

6 A. No.

7 Q. Okay. And this is where you indicate that Mr.
8 Belsito made a plea for his friend?

9 A. It would be prior. I think it was towards the
10 start of your video, from what I recall, during
11 the --

12 Q. What was the plea that he made?

13 A. I'm not sure of his exact words. Something to
14 the effect of you don't have to do this, don't
15 arrest him. Something along that lines.

16 Q. That's pretty benign, would you agree?

17 MR. D'AQUINO: Object to the form.

18 BY MR. GLAZER:

19 Q. You can answer if you understand.

20 A. I do understand.

21 Q. Okay.

22 A. The don't arrest my friend or you don't need to
23 do this, I would understand that as he doesn't

1 want whoever is being arrested arrested.

2 Q. Okay. Fair. I'm not disagreeing with you. I'm
3 asking you a straightforward question. Did he
4 curse at you?

5 A. Not at that time, aside from -- no, he did not.

6 Q. Okay. That's what I'm asking. He didn't curse
7 at you at that time?

8 A. No.

9 Q. He didn't put his hands on you at that time, is
10 that correct?

11 A. That's correct.

12 Q. Didn't put his hands on Deputy Flowers, is that
13 correct?

14 A. That's correct.

15 Q. Okay. And you saw no reason to charge him for a
16 crime up to this point in the video, is that
17 fair?

18 A. Earlier it was my interpretation of the events
19 that day, as I did not have the opportunity to
20 review the video, that he came up and interjected
21 himself in that arrest process.

22 Q. Okay. And when you say interjected, you mean
23 reached into the handcuffing area, correct?

1 A. He reached towards the area where the handcuffs
2 were. Did he make it to the handcuffing area?

3 Q. Since you brought it up, let's ask you. Did he
4 make it to the handcuffing area?

5 A. He was in the general area where the handcuffs
6 were being put on Mr. Lowry by the side of the
7 police car.

8 Q. How big is the general area of where the
9 handcuffs were being put on?

10 A. Well, there's two deputies trying to get a
11 subject handcuffed. I would not want to be, if I
12 was a citizen, I would not want to be standing to
13 -- near those deputies.

14 Q. How big is the general area of the handcuffing
15 area?

16 A. It varies.

17 Q. How big was it in this particular situation, how
18 big was it?

19 A. In this situation, in this situation, ideally a
20 handcuffing scenario, with all these people
21 around, should have been feet.

22 Q. How many feet?

23 A. In a situation like this, ideally there should be

1 a few feet between people under the set of these
2 circumstances.

3 Q. Okay. So is it your testimony under oath that
4 the general handcuffing area is a few feet away
5 from the person being handcuffed?

6 A. When it pertains to citizens under this set of
7 circumstances, I would say a safe area would be,
8 yes, what I just stated.

9 Q. Okay. So I don't understand that, so I need to
10 ask you. In this particular situation, this
11 arrest --

12 A. Yes.

13 Q. -- are you saying under oath that the general
14 handcuffing area is approximately two feet away
15 from the person being handcuffed?

16 A. For safety reasons, yes. There should not be
17 people next to the person being taken into
18 custody.

19 Q. All right. So is it your testimony, then, that
20 at seventeen nineteen forty-three of this video,
21 Mr. Belsito was within the handcuffing area?

22 A. At seventeen -- at this, seventeen nineteen, this
23 point in time, forty-three?

1 Q. Correct.

2 A. He was in the -- yeah, at this point in time.

3 Right prior to this point in time, yeah, he was
4 in the way.

5 Q. He was in the way now.

6 A. He was in the way or in the area where Mr. Lowry
7 was being handcuffed.

8 Q. How is the way different than the general
9 handcuffing area? Explain that to me.

10 A. Well, when you have an individual that stands in
11 front of a person being arrested to impede taking
12 that individual under arrest back to a police
13 car, I would say that he's in an area that he's
14 causing issues.

15 Q. He's causing issues?

16 A. Causing issues while someone else is being
17 arrested, yes.

18 Q. So it's your testimony under oath that Mr.
19 Belsito committed a crime at this juncture of Mr.
20 Lowry's arrest because he was in the general area
21 of where you were handcuffing Mr. Lowry?

22 MR. D'AQUINO: Object to the form.

23 BY MR. GLAZER:

1 Q. Is that your testimony?

2 A. What I'm testifying to is that just immediately
3 prior to this when Mr. Belsito stood in my way
4 and I used my baton to move him out of the way so
5 we could get by him, then yes, Mr. Belsito was
6 trying to hinder the process that was being
7 taking place of Mr. Lowry.

8 Q. Can we agree that up until seventeen nineteen
9 forty-three of the video, you cannot see anywhere
10 on this video that Mr. Belsito reached into the
11 handcuffing area? Can we agree on that?

12 A. I'm not going to agree on that. I'm not -- what
13 I would call him doing earlier is being in that
14 area and reaching in towards the handcuffs.

15 Q. You've got to listen to my question.

16 A. Okay. I'm sorry.

17 Q. My question is very simple. Can we agree that as
18 of seventeen nineteen forty-three of this video,
19 we have not seen at all any footage of Mr.
20 Belsito reaching into the handcuffing area?

21 MR. D'AQUINO: Okay. Let me just say two things.
22 Excuse me. Number one, you don't need to shout
23 at the witness. That can stop. He's answering

1 your question, he's not being difficult. And
2 number two, I think it would be important for you
3 to put the start point of this video, the
4 sequence where you started this, because you're
5 just saying up to. It sounds like you've played
6 the entire thing.

7 MR. GLAZER: Okay. Well, let me make it simple.

8 BY MR. GLAZER:

9 Q. From the beginning of the video up until
10 seventeen nineteen forty-three, can we agree that
11 the video does not show Mr. Belsito reaching into
12 the handcuffing area?

13 A. I don't recall what was played or the video that
14 occurred prior to this.

15 Q. I'll play it again. I'll start at the beginning,
16 seventeen nineteen sixteen. And you know what?
17 Maybe it will help if you tell me where Mr.
18 Belsito is reaching into the handcuffing area,
19 and I'll stop the video.

20 (Whereupon, video footage was played.)

21 THE WITNESS: Right when his -- if you saw in the
22 video, when his hand came forward, there was
23 another deputy that reached to pull his arm back.

1 My interpretation of him reaching in towards the
2 handcuffs occurred right at that moment in time
3 where he reached in towards the handcuffing area.
4 And I don't know if this is the complete video
5 you're showing me or just a clip in time per se,
6 but at that point where I saw him reaching in was
7 when his arm was being pulled back by the other
8 deputy.

9 BY MR. GLAZER:

10 Q. Okay. So it is now --

11 MR. D'AQUINO: The time signature we're looking at
12 right now is seventeen colon nineteen colon
13 twenty.

14 BY MR. GLAZER:

15 Q. So, Mr. Achtyl, is it now your testimony that as
16 of seventeen nineteen twenty, Mr. Belsito has, in
17 fact, reached into the general handcuffing area?

18 A. If the video is at the beginning, then yes,
19 that's the time.

20 Q. Okay. That's not my question. My question is, I
21 just played you the video from the beginning up
22 until seventeen nineteen twenty, and now you're
23 telling us that as of seventeen nineteen twenty,

1 Mr. Belsito has already reached into the, what
2 you called, general handcuffing area, is that
3 true?

4 A. Yes.

5 Q. Okay. And you saw him do this?

6 A. I did.

7 Q. Did you discuss that with anyone during the time
8 that you were at the stadium?

9 A. No.

10 Q. Did you put it anywhere in your accusatory
11 documents?

12 A. Not that I recall.

13 Q. Did you put it in the use of force report?

14 A. I don't recall my use of force report, so I'm not
15 sure what's -- if it's in there or not.

16 Q. If I told you it's not in there, would you have a
17 reason to disagree with that? I can show it to
18 you if you like.

19 A. I would not have a reason to disagree with you if
20 you're saying it's not in there.

21 Q. And you're indicating to us that Mr. Belsito had
22 committed a crime for which you could have
23 charged him that was relevant to your eventual

1 arrest by seventeen nineteen twenty of the video?

2 MR. D'AQUINO: Object to the form.

3 BY MR. GLAZER:

4 Q. Do you understand that question?

5 A. I do. Yes.

6 Q. The answer is yes?

7 A. Yes.

8 Q. Okay. You told us a little while ago that Mr.
9 Belsito was charged arising out of conduct that
10 happened during Mr. Lowry's arrest, is that
11 true?

12 A. That's correct.

13 Q. When did you first tell someone that Mr. Belsito
14 had interfered with Mr. Lowry's arrest?

15 A. I believe I placed it in my police report, that
16 there was -- that he was arrested for
17 interfering, in that complaint number that's
18 relative to Mr. Lowry's arrest.

19 Q. Okay.

20 A. Referring back to Mr. Lowry's arrest.

21 Q. So you charged Mr. Belsito with which offense
22 relative to the conduct with Mr. Lowry?

23 A. I don't recall what my information states in

1 regards to which charge you're referring to.

2 Q. Okay. Let me show you the accusatories.

3 Showing you Deposition Exhibit 7 for
4 identification. Do you see that?

5 A. Yes.

6 Q. Okay. And that's the accusatories, am I right?

7 A. That's correct. It's for criminal mischief.

8 Q. That's not the one, correct?

9 A. Correct.

10 Q. Okay. Next one is obstructing governmental
11 administration. Is that the one?

12 A. It may be. I'm not sure.

13 MR. D'AQUINO: Do you want him to read it to answer
14 the question?

15 MR. GLAZER: No, I don't, but I'll ask him another
16 question.

17 BY MR. GLAZER:

18 Q. If I were to tell you, with this document in
19 front of you, that it doesn't mention anywhere
20 that you were reaching into the handcuffing area
21 while Mr. Lowry was being arrested, would you
22 have a reason to disagree with that?

23 MR. D'AQUINO: Well, in that case, let him take time

1 to read the document.

2 MR. GLAZER: It's right up on the screen. He's
3 welcome to it.

4 BY MR. GLAZER:

5 Q. Take as long as you need.

6 A. I would say it does not.

7 Q. Okay.

8 A. Because in regards to --

9 Q. I'm not looking for the reasons.

10 A. Okay. Fair enough.

11 Q. Next information, disorderly conduct. Did Mr.
12 Belsito's conduct while you were arresting Mr.
13 Lowry play into your decision to arrest him for
14 disorderly conduct?

15 A. At this point in time, no.

16 Q. Well, at any point in time did it play in?

17 A. Mr. Belsito interfered with an earlier arrest, he
18 was part of the problem at the stadium. And yes,
19 his actions prior resulted in what I decided to
20 do.

21 Q. Okay. I'm going to ask you that again. I just
22 asked you did Mr. Belsito's actions and conduct
23 during your arrest of Mr. Lowry play a part in

1 your determination to charge him with disorderly
2 conduct, and you said at this time, no, is that
3 correct?

4 A. The --

5 Q. Yes or no?

6 A. Okay. Rephrase your -- not rephrase your
7 question. Repeat your question so I understand
8 what you're asking me, please.

9 Q. Simple question.

10 A. Sure.

11 Q. My question is, did Mr. Belsito's conduct during
12 your arrest of Mr. Lowry play into your decision
13 to charge him with disorderly conduct?

14 A. His actions did play a role in him eventually
15 being charged with these three offenses, yes.

16 Q. So when I asked you that two minutes ago and you
17 said not at this time, what did you mean by that?

18 A. If you were specifically relating -- or,
19 referring to this -- these charging instruments,
20 that's what I meant. However, his actions -- it
21 was a total set of circumstances that resulted in
22 him finally being -- or -- yeah. Finally being
23 arrested at the stadium that day, yes.

1 Q. So you're now telling us under oath that Mr.
2 Belsito's reaching into the handcuffing area
3 played a role in your determination to arrest him
4 for disorderly conduct, is that true?

5 A. What I am saying is that his set of circumstances
6 that day, from when he started in regards to the
7 reaching towards the handcuffing area and
8 standing in my way where he had to be pushed
9 away, yes, it played up to the final incident of
10 what occurred and the charges that were placed.

11 Q. Did Mr. Belsito's reaching into the handcuffing
12 area play a role in your decision to charge him
13 with disorderly conduct, yes or no?

14 MR. D'AQUINO: I think he just answered that question
15 very thoroughly.

16 MR. GLAZER: He absolutely did not answer it.
17 Absolutely did not. It's a yes or no question.
18 It's a yes or no question.

19 Miss Simonin, could you read back my
20 question, please?

21 MR. D'AQUINO: And the answer.

22 MR. GLAZER: There was no answer to the one I just
23 asked.

1 MR. D'AQUINO: No. No. I'm referring to the prior
2 question that ended in the word yes, that's why
3 I'm saying he answered it, but go ahead.

4 MR. GLAZER: Can you just read back my last question
5 so we can put this to an end?

6 (Whereupon, the above-requested previous
7 question was then read back by the reporter.)

8 MR. D'AQUINO: And that was the prior question that
9 you asked and that he answered. Let's read those
10 back.

11 MR. GLAZER: Fine. I mean, he can answer it very
12 easily right now without a narrative, but if you
13 want to read them all back, it's okay with me.

14 MR. D'AQUINO: I just want the prior question and
15 answer read back because he answered this
16 question.

17 MR. GLAZER: Okay. He absolutely did not, but go
18 ahead.

19 (Whereupon, the above-requested question and
20 answer at page 174, lines 16 through 23, were
21 then read back by the reporter.)

22 MR. GLAZER: I've got some ground left to cover here,
23 so my preference would be either direct him not

1 to answer this question and state the grounds,
2 please, or let him answer my last question and
3 let me move on.

4 MR. D'AQUINO: Let's do the latter.

5 MR. GLAZER: Okay.

6 Can you read my question, Miss Simonin, my
7 last question?

8 (Whereupon, the above-requested previous
9 question was then read back by the reporter.)

10 BY MR. GLAZER:

11 Q. Please answer the question.

12 A. Yes.

13 Q. Okay. And yet nowhere in this accusatory
14 instrument charging disorderly conduct did you
15 mention Mr. Belsito reaching into the handcuffing
16 area, is that true?

17 A. Yes.

18 Q. So we know now that you assumed at the time Mr.
19 Lowry was being arrested that Belsito and Lowry
20 at least knew each other, is that fair?

21 A. Yes.

22 Q. Okay. And you used the word friend. Did you
23 assume they were friends?

1 A. I used the word friends or acquaintances, yes.

2 Q. Did there come a time after Mr. Belsito was in
3 custody that you discussed this incident with a
4 Deputy Dusza?

5 A. Deputy Sergeant Dusza, yes.

6 Q. Okay. That was my next question. Can you give
7 us his full name and spell his last name and tell
8 us his rank?

9 A. At the time of the incident it was Sergeant
10 Timothy Dusza, if that answers everything in your
11 question.

12 Q. I just need his full name and spelling.

13 A. I believe the last name Dusza is spelled D-U-Z --
14 D-U-Z-A maybe, I believe.

15 Q. There may be a C in there somewhere?

16 A. S or C maybe, yes.

17 MR. GLAZER: We'll figure that out for you, Sue Ann.

18 THE WITNESS: C? I'm not sure. I don't recall.

19 Something like that.

20 BY MR. GLAZER:

21 Q. Did you discuss with, we'll call him Sergeant
22 Dusza, what had happened between you and Mr.
23 Belsito?

1 A. I believe I did, yes.

2 Q. And that obviously was after the events that took
3 place at your patrol car?

4 A. Yes.

5 Q. Were you truthful with him?

6 A. Yes.

7 Q. Did you change any of the details of the incident
8 when you told Sergeant Dusza about it?

9 A. No, I did not.

10 Q. Did you tell Sergeant Dusza about Mr. Belsito's
11 reaching into this handcuffing area?

12 A. I don't believe so, no.

13 Q. Let's talk about Dylan Lowry. Dylan Lowry was
14 arrested for throwing a beer can, is that
15 correct?

16 A. Yes. Full can of beer, yes.

17 Q. It's your testimony that it was a full can of
18 beer?

19 A. Yes.

20 Q. Did you see this can of beer being thrown at you?

21 A. I did not see it, no.

22 Q. Was it open or closed?

23 A. I believe it was closed.

1 Q. So Mr. Lowry and his friends were just hurling
2 full cans of closed beer at the police?

3 A. Yes, they were.

4 Q. Okay. And you know that how?

5 A. Because I was hit in the elbow by the can of
6 beer.

7 Q. Take me through the clothing that you were
8 wearing on your upper body on the date of the
9 incident.

10 A. I believe it was a long-sleeved shirt and my
11 ballistic vest. May have been a light jacket.
12 I'm not sure. I believe, if I recall from the
13 video, it was a jacket and my ballistic vest.

14 Q. I'm sorry if I'm taking a step back here, but how
15 do you know that Dylan Lowry threw a full closed
16 beer can at you?

17 A. Because the undercover deputy, Granville, told me
18 to watch out for Mr. Belsito. As he also, Deputy
19 Granville, also I believe, if memory serves me
20 correctly, gave a -- testimony to the effect that
21 Mr. Lowry threw that can of beer that hit me in
22 the elbow, and may have also signed a supporting
23 deposition. I'm not sure.

1 Q. Now your testimony is that Mr. Belsito threw the
2 full can of beer that hit you in the elbow?

3 A. No. Mr. Lowry threw the full can of beer, that
4 was explained to me by Deputy Granville.

5 Q. Okay. And what was --

6 A. That's why Mr. Lowry was brought out of the
7 crowd, because he threw the full can of beer that
8 hit me in the elbow.

9 Q. Okay. And then you said something about Deputy
10 Granville telling you to keep your eye on Mr.
11 Belsito at that time?

12 A. Yes, because he was --

13 Q. Okay. And what was that all about?

14 A. He was with Mr. Lowry and he was following Mr.
15 Lowry around.

16 Q. Okay. Were you injured by this full can of beer
17 that was thrown at you?

18 A. Was I injured?

19 Q. Yes.

20 A. No. Did I have a sore elbow? Yes.

21 Q. Do you know a person named Kara Massotti?

22 A. I'm not sure. I don't know --

23 Q. Do you remember --

1 A. I'm sorry. I don't know who you're referring to.

2 Q. So when I ask you if you know who Kara Massotti
3 is, your answer is no, you don't?

4 A. No, I don't.

5 Q. Okay. Do you recall a person named Kara Massotti
6 testifying at your criminal trial?

7 A. Yes. Now that you mentioned the connection, yes,
8 I do.

9 Q. Is she a nurse with no criminal record?

10 A. I'm not sure what her occupation is. I don't
11 recall.

12 Q. If I told you she was a health care worker with
13 no criminal record, would you have a reason to
14 disagree with that?

15 A. No, I don't.

16 Q. And if I told you that she didn't know Mr.
17 Belsito before 12/3 of '17, would you have a
18 reason to disagree with that?

19 A. No, I would not.

20 Q. Did you hear Miss Massotti testify at trial that
21 Mr. Lowry threw an empty can of beer over his
22 shoulder in reverse?

23 A. I don't recall what her testimony was.

1 Q. If I told you that Miss Massotti testified that
2 Mr. Lowry threw an empty can of beer over his
3 shoulder behind him, would you have a reason to
4 disagree with that?

5 A. I would not have a reason to disagree with her
6 testimony. No, I do not.

7 Q. Do you recall what Mr. Lowry was charged with as
8 a result of the can throwing incident?

9 A. I believe it was disorderly conduct.

10 Q. There is no allegation that Mr. Belsito threw a
11 can of beer, is that correct?

12 A. That's correct.

13 Q. Did you use your baton at all during the arrest
14 of Mr. Lowry?

15 A. Yes.

16 Q. Why?

17 A. Because the baton was in my hand and I used it on
18 his back to keep him secure against the patrol
19 car so we could handcuff him.

20 Q. Did you use it on his head at all?

21 A. Did not, no.

22 Q. Okay. Let's watch Deposition Exhibit 11 for
23 identification. Do you see that?

1 A. Yeah. Using the baton to hold his head down,
2 yes.

3 Q. So the baton is on his head, is that correct?

4 A. Yes. It's on his head, yes.

5 Q. You felt that you needed to use the baton on his
6 head why?

7 A. To get him secured. He was lifting and trying to
8 get off the car.

9 Q. Was he charged with resisting arrest?

10 A. I don't recall.

11 Q. Do you recall what happened to all of the charges
12 against Mr. Lowry?

13 A. I do not know.

14 Q. If I told you that each and every single one of
15 those charges was dismissed, would you have a
16 reason to disagree with me?

17 A. No, I would not.

18 Q. So someone was alleged to have thrown a full can
19 of beer at a law enforcement officer and his
20 charges were dismissed, that's what you're
21 telling me?

22 MR. D'AQUINO: Wait. Wait. Wait. Wait. Wait.

23 He's not telling you anything. You asked him if

1 he had a reason to disagree with your statement
2 that that's what happened.

3 MR. GLAZER: Fine. I can rephrase it.

4 BY MR. GLAZER:

5 Q. Do you have any reason to believe that those
6 charges weren't dismissed?

7 A. No, I do not.

8 Q. Okay. Do you find it surprising the DA's office
9 would dismiss charges against somebody that was
10 alleged to have thrown a full can of beer at a
11 law enforcement officer?

12 MR. D'AQUINO: I'm going to object on the basis that
13 surprise or his reaction to something like that
14 isn't really relevant.

15 But go ahead and answer.

16 THE WITNESS: I'm sorry. Could you just repeat the
17 question?

18 MR. D'AQUINO: She'll read it back.

19 MR. GLAZER: Okay.

20 (Whereupon, the above-requested previous
21 question was then read back by the reporter.)

22 THE WITNESS: I do find it surprising, yes.

23 BY MR. GLAZER:

1 Q. A unique situation, would you agree?

2 MR. D'AQUINO: Object to the form.

3 THE WITNESS: I don't know why the district
4 attorney's offices -- the district attorney
5 office, why they dismiss charges. I do not have
6 -- I do not know why they do that.

7 BY MR. GLAZER:

8 Q. Do you remember telling us about two hours ago
9 that sometimes DA's dismiss charges if they don't
10 believe the conduct actually took place?

11 A. I said that, from what I recall, that there's
12 various reasons why charges are dismissed, yes.

13 Q. Was that one of the reasons?

14 A. Very well could be, yes.

15 Q. Did you call Mr. Lowry an asshole during the
16 course of his arrest?

17 A. Not that I recall.

18 Q. If I told you that I have the video and I hear
19 you calling him an asshole, would you have a
20 reason to disagree with that?

21 MR. D'AQUINO: Wait. Wait. Wait, Ken.

22 If you refer to the video, let's just watch
23 it as opposed to asking him if he agrees or he

1 disagrees with your opinion.

2 MR. GLAZER: I'm just trying to make it easy for him,
3 but okay.

4 You know what? Do you want to take two
5 minutes?

6 THE WITNESS: Sure.

7 THE VIDEOGRAPHER: Four-twenty-eight p.m. We're
8 going off the record.

9 (Whereupon, a short recess was then taken.)

10 THE VIDEOGRAPHER: Four-thirty-four p.m. We're back
11 on the record.

12 MR. GLAZER: I believe the question was did you call
13 Lowry an asshole during the course of his
14 arrest, Mr. Achtyl didn't recall, and then Mr.
15 D'Aquino asked me to show him the video. Can you
16 read it back just so that I know where we're
17 going?

18 (Whereupon, the above-requested previous
19 question was then read back by the reporter.)

20 BY MR. GLAZER:

21 Q. All right. Let's move on from there.

22 Mr. Achtyl, I'm going to show you Deposition
23 Exhibit 11, which is the video. I'm going to

1 scrub to seventeen twenty thirty.

2 (Whereupon, video footage was played.)

3 MR. GLAZER: It's twenty-one. I'm sorry. Hold on.

4 (Whereupon, video footage was played.)

5 BY MR. GLAZER:

6 Q. So at seventeen twenty thirty, it sounds like
7 Lowry says something to the effect of I smashed
8 the fucking can, and you say well, you hit me
9 with it, asshole, is that fair?

10 A. That's fair.

11 Q. Okay. Let's talk about Mr. Belsito a little
12 more. Would you agree with me that part of the
13 duty of a law enforcement officer is to protect
14 and serve the public?

15 A. Yes.

16 Q. And we've established that you do have a duty to
17 respond to reasonable requests for advice or
18 information from citizens, is that true?

19 A. Yes.

20 Q. You've given testimony to the effect of you knew
21 who Nick Belsito was when he walked up to your
22 car, is that correct?

23 A. I'm not sure. I mean, I -- yes.

1 Q. Let me ask you a better question.

2 A. Sure.

3 Q. When Nick Belsito walked up to your car, did you
4 know who he was?

5 A. Immediately?

6 Q. Yes.

7 A. No, it didn't click for a little bit after. When
8 he first I believe -- I don't know if he knocked
9 on my window, I don't recall, or if I was just
10 startled when I looked up to see someone standing
11 by my window.

12 Q. When did you recognize Mr. Belsito?

13 A. I would say maybe roughly probably midway through
14 the conversation that he was having at the window
15 with me.

16 Q. Okay. And how did you come to recognize him at
17 that point?

18 A. I believe -- I mean, I recalled what had just
19 happened earlier and I may have made a comment,
20 do you want to go to the jail with your friend.

21 Q. Okay. But my specific question is, how was it
22 that you didn't recognize him at first and then
23 at some point during your conversation you were

1 able to recognize him?

2 A. I wasn't expecting to have a person standing at
3 the door of my police car.

4 Q. Okay. Do you know at what point in your
5 conversation you recognized him?

6 A. Roughly around the point I asked him if he wanted
7 to go to jail.

8 Q. Okay. I'm going to ask you some questions about
9 what Mr. Belsito said to you, but first, up until
10 the point that he came up to your window, you had
11 not arrested him for any criminal offense, is
12 that correct?

13 A. That is correct.

14 Q. And you had not arrested him for a violation of
15 the Penal Law either, is that correct?

16 A. That's correct.

17 Q. And we agree that swearing at a police officer is
18 not a crime in New York State?

19 A. That is correct.

20 Q. And that swearing at a police officer is not even
21 a Penal Law violation in New York State?

22 A. That is correct.

23 Q. Mr. Belsito walked up to your cruiser and tapped

1 on the window, or knocked, is that correct?

2 A. Yeah. I would have to see the video to recall,
3 but I think there may have been a tap, which kind
4 of, under those set of circumstances, kind of --
5 I don't want to say startled me but kind of, you
6 know, made me like look, like who's knocking on
7 my door, you know, is there something else going
8 on.

9 Q. Let's go to that point in the video. We'll start
10 a little bit before.

11 Let me ask you this before we do that. Do
12 you know how long it was between the time that
13 you placed Mr. Lowry into custody and the time
14 that Mr. Belsito walked up and knocked on your
15 window?

16 A. I'm not sure. I'm not sure.

17 Q. If I told you that it was about six or seven
18 minutes, would you have a reason to disagree with
19 that?

20 A. No, I would not.

21 Q. Okay. Can you see the screen?

22 A. Yes, I can.

23 Q. I'm going to scrub it to seventeen twenty-five

1 even. Well, seventeen twenty-five o two, and
2 play it from here.

3 (Whereupon, video footage was played.)

4 BY MR. GLAZER:

5 Q. So is it fair to say that you get back into the
6 police car around seventeen twenty-five
7 twenty-three?

8 A. I'm not sure if that's me or if that's Deputy
9 Flowers. I can't tell by this picture.

10 Q. All right. Well, we're looking at Deputy
11 Flowers' body cam, that's not moving.

12 A. Correct.

13 Q. The other door is opening, is that correct?

14 A. Yes. Makes sense, yes.

15 Q. So can we agree that it's you getting back in the
16 car at seventeen twenty-five twenty-three?

17 A. Yes.

18 (Whereupon, video footage was played.)

19 BY MR. GLAZER:

20 Q. Would you agree with me that from seventeen
21 twenty-five twenty-three to seventeen twenty-five
22 forty-three, there's not much going on other than
23 you and Deputy Flowers are sitting in your

1 cruiser?

2 A. Yes.

3 (Whereupon, video footage was played.)

4 BY MR. GLAZER:

5 Q. And now we're at seventeen twenty-six zero zero.

6 Would you agree that still you're just sitting in
7 the cruiser with Deputy Flowers?

8 A. Yes.

9 (Whereupon, video footage was played.)

10 BY MR. GLAZER:

11 Q. Okay. Now, at seventeen twenty-six o six, can
12 you see Mr. Belsito sort of come into the frame
13 and now it looks like he's walking up to your
14 window?

15 A. Yes.

16 Q. Okay.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. Did you just hear the knock at seventeen
20 twenty-six o eight?

21 A. Yes.

22 Q. Okay. When you heard the knock, did you look up?

23 A. I would imagine I looked up. I would have to say

1 yes.

2 Q. And when you looked up, is it fair to say that
3 you didn't immediately recognize who Belsito was?

4 A. Yes.

5 Q. Okay.

6 (Whereupon, video footage was played.)

7 BY MR. GLAZER:

8 Q. Is it fair to say that right there at seventeen
9 twenty-six twelve, Belsito says uh, I'm sorry,
10 I'm just wondering where you guys are going
11 because I'm going to meet my friend?

12 A. Yes.

13 Q. I can play it again. Okay. That's fair? Is
14 that fair?

15 A. Yes.

16 Q. Okay.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. And your response is who is your friend, is that
20 correct?

21 A. Correct.

22 Q. Had you recognized who Belsito was at the time
23 you said who is your friend?

1 A. I believe I -- from what I recall, earlier I
2 stated once I realized it was Mr. Belsito, that's
3 when I made the comment about asking him if he
4 wanted to go to jail too. So I don't think that
5 happened at this point yet.

6 Q. Okay. So you had not yet recognized Mr. Belsito
7 when you said who's your friend?

8 A. It did not -- I don't believe it clicked at this
9 point.

10 (Whereupon, video footage was played.)

11 BY MR. GLAZER:

12 Q. And then Mr. Belsito says the kid in the back, is
13 that right?

14 A. Correct.

15 (Whereupon, video footage was played.)

16 BY MR. GLAZER:

17 Q. And your reply is do you want to go to jail with
18 him?

19 A. Yes.

20 Q. Okay.

21 (Whereupon, video footage was played.)

22 BY MR. GLAZER:

23 Q. Nick says no, I'm just, is that correct?

1 A. Sounds like that, yes.

2 Q. And you cut that off with, quote, beat it,
3 unquote, is that correct?

4 A. Yes.

5 (Whereupon, video footage was played.)

6 BY MR. GLAZER:

7 Q. And then Nick says no, again, is that right?

8 A. That's what it sounds like, yes.

9 Q. And you say he's going to jail, is that correct?

10 A. Yes.

11 Q. Okay. Can we agree that from the --

12 A. I'm sorry. Just -- you were referring to Mr.
13 Lowry going to jail, is that correct? I just
14 want to make sure that's what I'm -- that's the
15 question I'm answering.

16 Q. Well, I'm only asking you, you responded to Mr.
17 Belsito by saying he's going to jail? Are those
18 the words that you used?

19 A. Yes.

20 Q. Okay. Can we agree that at least from the point
21 that Mr. Belsito walked up to your vehicle and
22 tapped on the glass up until right now, he's
23 committed no crime?

1 A. Correct.

2 Q. Okay.

3 (Whereupon, video footage was played.)

4 BY MR. GLAZER:

5 Q. Then Nick says okay, could you tell me the
6 location, is that correct?

7 A. Correct.

8 (Whereupon, video footage was played.)

9 BY MR. GLAZER:

10 Q. Your response is 10 Delaware, beat it, is that
11 correct?

12 A. Yes.

13 Q. Okay. Now, let me just ask you a few questions
14 in the meantime.

15 A. Sure.

16 Q. You didn't know Nick before that date and you
17 didn't know where he was from, is that correct?

18 A. Correct.

19 Q. You didn't know he wasn't a Buffalo boy born and
20 raised, is that fair?

21 A. Correct.

22 Q. Okay. So you didn't know if he knew what 10
23 Delaware was, is that true?

1 A. I can't answer for what Mr. Belsito knows and
2 doesn't know.

3 Q. That's specifically my point. You just didn't
4 know him at all, correct?

5 A. That is correct.

6 Q. So you wouldn't know that he was from a town
7 that's three hundred and fifty some-odd miles
8 away from here, true?

9 A. That is correct, yes.

10 Q. How could you? I'm not trying to trick you.

11 A. No. I understand.

12 (Whereupon, video footage was played.)

13 BY MR. GLAZER:

14 Q. Next Nick says what do you mean, tell me the
15 location, is that true?

16 A. Yes.

17 Q. Okay.

18 (Whereupon, video footage was played.)

19 BY MR. GLAZER:

20 Q. And then you say 10 Delaware, beat it, again, is
21 that correct?

22 A. Yes.

23 Q. And I'm going to rewind this ten seconds so you

1 can hear what Nick says after you say 10
2 Delaware, beat it, for the second time.

3 (Whereupon, video footage was played.)

4 BY MR. GLAZER:

5 Q. At some point around seventeen twenty-six
6 twenty-six, does it appear that Mr. Belsito
7 figures out what you're saying and says thank
8 you?

9 A. I didn't hear the thank you, but I believe at
10 some point, yes.

11 Q. Okay. Well, let me play it again and see if you
12 can hear it.

13 A. Sure.

14 Q. Thank you.

15 (Whereupon, video footage was played.)

16 BY MR. GLAZER:

17 Q. Did you hear the thank you?

18 A. I'm sorry, I did not catch the thank you. No, I
19 did not hear it.

20 Q. Did you hear the thank you that day?

21 A. I did not hear the thank you that day, no, I did
22 not.

23 Q. During your conversation with Belsito at the

1 cruiser, did you ever say leave the area?

2 A. No.

3 Q. You said beat it, and by beat it you meant leave
4 the area?

5 A. Correct.

6 Q. Did you ever tell him 10 Delaware in the City of
7 Buffalo?

8 A. I did not refer to the City of Buffalo since we
9 were in Buffalo, no.

10 Q. Well, you were in Orchard Park, is that right?

11 A. Well, yes, but you're at a Buffalo Bills game.
12 So I did not specify and tell him Buffalo, I did
13 not.

14 Q. Okay. Did you say street, ave., road?

15 A. I don't recall saying if it was a street or
16 avenue. I just merely stated 10 Delaware.

17 Q. All right. Well, if I told you that nowhere on
18 the video did you say street, road, avenue or
19 anything else, would you have a reason to
20 disagree with me?

21 A. I would not.

22 Q. Okay. Did you ever tell him his friend was going
23 to the holding center?

1 A. I don't believe I referred to it as the holding
2 center. As we heard in the video, I believe I
3 said jail.

4 Q. You said he's going to jail, is that fair?

5 A. Correct.

6 Q. Did you tell Belsito that Mr. Lowry was going to
7 the Erie County Holding Center?

8 A. At this point, no. I didn't believe there was a
9 reason to.

10 Q. You know, I really don't want to go on too much
11 longer, but it will just help --

12 A. I understand.

13 Q. -- if you just answer my questions without --

14 A. Absolutely. Okay. Fair enough.

15 Q. Just so that I get an answer to my question, did
16 you tell him he was going to the Erie County
17 Holding Center?

18 A. No, I did not.

19 Q. Did you tell him that the place that he was going
20 to was in Buffalo?

21 A. No, I did not.

22 Q. Did you tell him what town it was in?

23 A. No, I did not.

1 Q. The description that you gave was 10 Delaware
2 followed by beat it, is that fair?

3 A. Yes.

4 Q. Do you know how many 10 Delawares there are in
5 Erie County?

6 A. I'm not sure.

7 Q. Okay. If I told you that there was a 10 Delaware
8 in Buffalo, a 10 Delaware in Kenmore, a 10
9 Delaware in Tonawanda, a 10 Delaware in Clarence,
10 would you have any reason to disagree with that?

11 A. No, I would not, if you said there was.

12 Q. Well, let me ask you another question.

13 A. Sure.

14 Q. You're a Buffalo boy born and raised, is that
15 correct? Or Buffalo man. I don't mean offense
16 by that. Buffalo man, true?

17 A. Yes.

18 Q. You know that Delaware runs through Buffalo,
19 North Buffalo, Kenmore, Tonawanda, et cetera, is
20 that fair?

21 A. Yes.

22 Q. And you know there's a Delaware Avenue and a
23 Delaware Road, is that fair?

1 A. Yes.

2 Q. And again, you had no way to know whether Mr.
3 Belsito was from Buffalo or whether he was from
4 California, true?

5 A. That is correct.

6 Q. You indicated that you didn't hear Mr. Belsito
7 say thank you, but is it fair to say that your
8 conversation ended at some point and he turned to
9 walk away from your cruiser?

10 A. At some point, yes, he did.

11 Q. And at the point that he turned to walk away from
12 your cruiser, the doors on your cruiser were
13 closed, is that fair?

14 A. Yes.

15 Q. And you indicated to us what the atmosphere was
16 like outside of the vehicle at that time,
17 correct?

18 A. Correct.

19 Q. Very loud and hard to hear, is that true?

20 A. Yes. Yes.

21 Q. I'll scrub to seventeen twenty-six twenty-nine.
22 I'll just let it play since it's at seventeen
23 twenty-six twenty-seven.

1 (Whereupon, video footage was played.)

2 BY MR. GLAZER:

3 Q. At seventeen twenty-six twenty-nine, does Mr.
4 Belsito turn back toward the cruiser and say
5 something to you?

6 A. I believe he did, yes.

7 Q. Do you know what he said?

8 A. I would have to watch the video to recall, but I
9 believe it was some sort of a profanity or
10 utterance.

11 Q. Okay. Let's watch it.

12 (Whereupon, video footage was played.)

13 BY MR. GLAZER:

14 Q. Do you know what he said there?

15 A. It sounded something to the effect of do your
16 fucking job, or something similar.

17 Q. Okay. So is it fair to say that you don't know
18 exactly what he said?

19 A. I knew he used profanity and I knew he said
20 something to the effect of do your fucking job.

21 Q. But as you sit here today, you don't know exactly
22 what he said, is that fair?

23 A. The exact words, no, I do not.

1 Q. Okay. And on the date of the incident, you
2 didn't know the exact words, is that fair?

3 A. I knew he had stated something to the effect of
4 do your fucking job.

5 Q. All right. And I'm not taking you to task about
6 whether or not he didn't use a profanity, I'm not
7 trying to make it look like that didn't happen.

8 A. Right.

9 Q. I'm just asking you, with regard to whatever he
10 said, profanity or not, you didn't know exactly
11 the words he used, correct?

12 A. Correct.

13 Q. At seventeen twenty-six twenty-nine, he says
14 whatever profanity he said, and at that point
15 your cruiser doors are still closed, is that
16 correct?

17 A. Yes.

18 Q. And then after he makes those comments, he then
19 turns around again and begins to walk away from
20 the cruiser, is that correct?

21 A. I guess if I watched the video I could probably
22 answer that question for you.

23 Q. Let's start it at seventeen twenty-six

1 twenty-nine.

2 (Whereupon, video footage was played.)

3 BY MR. GLAZER:

4 Q. So does he start to walk away?

5 A. Yes.

6 Q. Okay. Here's what I want to ask you. At some
7 point you say come here, is that correct?

8 A. Yes.

9 Q. Did you say come here while his back was to you?

10 A. I believe he had -- was in the process of turning
11 around when I yelled come here to him.

12 Q. Let's watch it again.

13 (Whereupon, video footage was played.)

14 BY MR. GLAZER:

15 Q. Is he walking away from you at seventeen
16 twenty-six thirty?

17 A. Yes.

18 Q. Okay. And at seventeen twenty-six thirty, have
19 you said come here yet?

20 A. I don't believe so.

21 Q. Okay.

22 (Whereupon, video footage was played.)

23 BY MR. GLAZER:

1 Q. At seventeen twenty-six, we'll call it
2 twenty-nine or thirty, did you say come here?

3 A. I did, yes.

4 Q. All right. And we've confirmed that he was
5 walking away from you at that time, correct?

6 A. Correct.

7 Q. All right. Did you say come here before or after
8 you opened your cruiser door?

9 A. I'm not certain. It may have been right at the
10 same time. I might have yelled out the window
11 because the window was down from just having a
12 conversation with him, and I was in the process
13 of exiting the patrol car.

14 Q. All right. Well, let's break that down. How far
15 down was the window?

16 A. The window would have been down probably I'd say
17 maybe halfway, if --

18 Q. Your window was down half --

19 A. Yeah. Three quarters or half the way down, yes.

20 Q. So your testimony is that at that time when you
21 said come here, your window was down halfway to
22 three quarters of the way down?

23 A. Well, no. Halfway down or three quarters of the

1 way -- a quarter of the way down, I should say,
2 to about halfway down.

3 Q. I'm sorry. I may have misunderstood you.

4 A. Yes.

5 Q. Your testimony is that from the top, the top
6 meaning all the way rolled up, your window was
7 rolled down one quarter of the way down to one
8 half of the way down, is that correct?

9 A. Yes.

10 Q. All right. Let's watch this again to see when
11 you said come here.

12 (Whereupon, video footage was played.)

13 BY MR. GLAZER:

14 Q. So having watched that again, does it appear that
15 you say come here, and then a split second later
16 open up your cruiser door?

17 A. I would say it was almost simultaneously. When I
18 open the door I yell out come here.

19 Q. Do you want to watch it again just to make sure?

20 A. Sure. My interpretation of what you're asking me
21 is what I'm observing right now.

22 Q. Let's watch it one more time.

23 A. Sure.

1 (Whereupon, video footage was played.)

2 BY MR. GLAZER:

3 Q. So does it appear that you open the door after
4 the word here comes out of your mouth?

5 A. Yeah. I mean, it's very close. It appears to me
6 that the door is opening and I'm telling him to
7 come here.

8 Q. All right. On what word?

9 A. I'm sorry? What word?

10 Q. Had you already said come by the time you opened
11 the door?

12 A. I would say towards the end of come. If you're
13 breaking it down, the door opened simultaneously,
14 in my viewing of the video here.

15 Q. All right. So your testimony is that you said
16 come here at the approximate time that you opened
17 up the door to the police cruiser, is that fair?

18 A. I would say I'm opening up the door and saying
19 those words at the same time, yes.

20 Q. Okay. And you've indicated to us that it was
21 extremely loud outside?

22 A. Yes. It was loud outside, yup.

23 Q. Do you know if Mr. Belsito heard you say that?

1 A. I'm not sure.

2 Q. Okay. Had you determined that you were going to
3 arrest him before you opened up your cruiser
4 door?

5 A. I did not.

6 Q. When was it that you determined that you were
7 going to arrest him?

8 A. During the interactions with Mr. Belsito when I
9 finally, when I finally caught up to him.

10 Q. All right. So when you finally caught up to him,
11 let's talk about that.

12 A. Sure.

13 Q. So when you said come here, you had not yet
14 determined that you were going to arrest him, is
15 that correct?

16 A. Correct, because there's other options.

17 Q. Okay. And at that point we know that Belsito was
18 walking away from you, is that correct?

19 A. Correct.

20 Q. Did you say anything else to him between the time
21 you got out of the vehicle and the time that you
22 made physical contact with him?

23 A. Not that I recall, no.

1 Q. When you made physical contact with him, he was
2 facing away from you, is that correct?

3 A. Correct.

4 Q. Okay. Tell me what you did.

5 A. I believe when I finally caught up to him --
6 prior to catching up to him, I heard someone
7 yell, from the crowd, run. At that point I
8 thought Mr. Belsito was going to take off and
9 run. At that point I reached up and I believe I
10 grabbed his sweatshirt or his hooded area to pull
11 him to me and try to get in front of him.

12 Q. When you were sitting in the patrol car before
13 the interaction with Belsito even started, where
14 was the baton?

15 A. I'm not sure. From looking at the video -- I
16 don't recall, but from watching the video I don't
17 believe it would have been at my left side. I'm
18 believing it would have been either sitting in my
19 lap or it would have been alongside my right
20 side. I'm not sure. I don't recall.

21 Q. Do you know if you took out the baton when you
22 got out of the vehicle?

23 A. Yeah. Whenever I leave the patrol car in these

1 set of circumstances, I always take my baton with
2 me.

3 Q. Would the baton have been in your right hand or
4 your left hand?

5 A. It most likely would have been in my right hand.

6 Q. All right. And you said that you thought Belsito
7 was going to run, so you went up and you grabbed
8 him by the sweatshirt and hoodie area?

9 A. I heard somebody make a comment he's coming for
10 you, run. And yes, at that point I kind of moved
11 a little faster and reached towards his hoodie or
12 sweatshirt from his like rear shoulder area.

13 Q. Which hand did you use to do that?

14 A. I would say most likely -- if my baton was in my
15 right, I would have to say it would have been my
16 left hand.

17 Q. Did you reach over Mr. Belsito's right shoulder
18 and put your baton around his throat?

19 A. I reached my baton around -- not around his
20 throat but I put my baton as I grabbed him by the
21 rear and I stuck my baton in front of him.
22 There's quite a bit of height difference, I think
23 it would look kind of awkward if my baton was up

1 on his throat at that point in time.

2 Q. All right. So we agree, then, that you grabbed
3 him with your left hand and that you reached
4 around with your baton hand and your baton at
5 that point was in front of him to some extent?

6 A. Yes. Kind of like hand behind him to pull him
7 backwards, baton in front of him to kind of bring
8 him back or stop him so we could have a
9 discussion.

10 Q. All right. And he was facing away from you at
11 that point?

12 A. At that point in time he was facing away, yes.

13 Q. Okay. All right. And at the time that you did
14 that, you had not yet determined that you were
15 going to arrest Mr. Belsito, is that true?

16 A. At that point in time I determined there was two
17 options. The first option being ejection, as the
18 Bills have requested throughout the years for
19 unruly fans and patrons.

20 Q. All right. Let me --

21 A. Sorry. To finish answering your question, the
22 other option was to arrest him.

23 Q. Okay. So when you're sitting in the vehicle,

1 you've not yet decided to arrest him, is that
2 correct?

3 A. Correct.

4 Q. Was that because you didn't feel you had probable
5 cause to arrest at that point?

6 A. No. I mean, based upon his actions earlier, he
7 was given a break, and you just can't arrest
8 everybody. So I don't feel that it was a matter
9 of probable cause or not. It was a matter of
10 dealing with the one subject already in custody.

11 Q. All right. Well, let's just take a step back.

12 A. Sure.

13 Q. You testified that before you got out of the car
14 you did not intend to arrest him, is that
15 correct?

16 A. Correct.

17 Q. Okay. And you testified that you got out of the
18 car as he was walking away and grabbed him with
19 your left hand and then put your right hand
20 around the front of him with your baton, is that
21 correct?

22 A. Yes.

23 Q. When, between the time you got out of the vehicle

1 and the time that you put your baton around the
2 right of him, did you determine that you were
3 going to arrest him, if you did?

4 A. It would be shortly thereafter I would say.

5 Q. Well, that's my question.

6 A. Sure.

7 Q. When you grabbed him with your left hand before
8 the baton goes around, you haven't yet determined
9 you're going to arrest him, is that true?

10 A. Yes.

11 Q. Then the right hand goes around with the baton in
12 front of him, and you haven't yet determined
13 you're going to arrest him, is that true?

14 A. True.

15 Q. And then a short time later you determine that
16 you are going to arrest him, is that fair?

17 A. Yes.

18 Q. Okay. Let me ask you a few questions about the
19 short period of time after you put your right
20 hand around him with the baton. When you said
21 come here and got out of the vehicle, do you feel
22 that you lost your temper?

23 A. I would say no.

1 Q. When you got out of the vehicle after saying come
2 here, were you angry?

3 A. No.

4 Q. When you -- strike that. Do you know how long it
5 took Deputy Flowers to exit the cruiser after you
6 got out of the cruiser?

7 A. I'm not sure.

8 Q. I could show you the video if you want, but if I
9 told you that it was about ten seconds, would you
10 have a reason to disagree with that?

11 A. I would not, no.

12 Q. Okay. Did you ever ask Deputy Flowers why he
13 waited ten seconds to get out of the vehicle to
14 come to assist you?

15 A. I don't think I needed to ask him. I think it's
16 a matter of there's a rifle in the car and that
17 he has a prisoner back there.

18 Q. Okay. But the prisoner is separated from the
19 front of the vehicle where the rifle is, correct?

20 A. Correct.

21 Q. No way for him to reach up and get the rifle,
22 true?

23 A. Yes, that's true.

1 Q. So the rifle is irrelevant, is that correct?

2 A. Well, your patrol car is surrounded by a lot of
3 people and there's a prisoner in the back of the
4 car and a rifle in the front of the car. And
5 under the set of circumstances, there's some
6 cause for concern, yes.

7 Q. Okay. Did you have cause for concern because you
8 thought that Mr. Lowry was somehow going to be
9 able to get into the front to get the rifle?

10 A. No, I did not.

11 Q. Okay. Did you have cause for concern because you
12 thought some fan was going to try to get into
13 your sheriff's vehicle and get the rifle?

14 A. To get the rifle, no.

15 Q. Okay. So when I asked you if you ever asked
16 Deputy Flowers why he waited ten seconds to get
17 out, was the answer to that question no, you
18 never asked him?

19 A. Yeah. I never asked him why he spent ten seconds
20 to get out of the car.

21 Q. But your testimony was that you thought that he
22 had concerns about the rifle inside of the
23 vehicle, is that fair?

1 A. A prisoner and a rifle, yes. I mean, in a
2 crowded situation, it would raise concerns for
3 me.

4 Q. Okay. So is it your belief that Deputy Flowers
5 didn't get out of the vehicle for ten seconds
6 because he had concerns about the prisoner and
7 the rifle?

8 A. Yes.

9 Q. Okay. Let's -- strike that. Mr. Achtyl, I think
10 we're wrapping up. I appreciate your patience.
11 I'm certainly well beyond halfway done.

12 I want to ask you some questions about the
13 time period after your left hand grabbed Mr.
14 Belsito and your right hand went around the front
15 of him. What happened at that point?

16 A. From what I recall, there was a point where I
17 believe I told him to back up.

18 Q. When you told him to back up, did you also begin
19 to push him?

20 A. After he said no, why, and I believe at that
21 point I said back up, and then I started to push
22 him back.

23 Q. All right. So when you're pushing him back, are

1 you pushing him toward your police cruiser?

2 A. Yes, I am, out of what I perceived as a crowd of
3 unruly people or fans, to push him more towards
4 my patrol car.

5 Q. All right. Again, I really want to finish this
6 up.

7 A. I'm sorry. I'm sorry. Yes. Yes.

8 Q. It's okay. Mr. D'Aquino is free to ask you as
9 many questions as he wants when I'm done asking
10 you questions, and he may ask about the unruly
11 crowd. You've made that perfectly clear.

12 A. Sure.

13 Q. But if you want this to get done more
14 efficiently, you've just got to answer my
15 questions as directly as you can. Okay?

16 A. Okay. Fair enough.

17 Q. So at some point you're pushing Mr. Belsito
18 backwards, is that correct?

19 A. Yes.

20 Q. Do you know where the baton is at this point?

21 A. Towards the -- his midsection.

22 Q. Okay. So you're pushing him backwards and you're
23 moving forwards, is that correct?

1 A. Correct.

2 Q. Okay. And are you pushing him backwards toward
3 your vehicle?

4 A. Yes.

5 Q. Okay. Did you eventually push him into your
6 vehicle?

7 A. Yes, at the point we reached the vehicle.

8 Q. Okay. Can you describe the impact between Mr.
9 Belsito's body and the cruiser? And here's what
10 I'm asking. Was it a light impact, was it a
11 medium impact, heavy or something else?

12 A. I don't recall how the impact -- you know, I was
13 pushing him, he was pushing forward, I was
14 pushing back. So I can't really testify to what
15 kind of impact it was. At some point we reached
16 the car in that location.

17 Q. Okay. And you were pushing him toward the car
18 and that stopped when he hit the vehicle, is that
19 fair?

20 A. Yes.

21 Q. Okay. At some point later did you strike him in
22 the face with your baton?

23 A. At some point, yes, my baton hit his nose.

1 Q. Okay. Can you describe for me how it came to
2 pass that your baton hit his nose?

3 A. Well, at some point in time he had his hands on
4 my baton. At one point in time he had my baton
5 stretched out over my head, from what I recall,
6 and there was a, from what I perceived, a
7 struggle where he was -- where he had his hands
8 on my baton.

9 Q. All right. At some point after you pushed him
10 into the vehicle, was your baton on his neck?

11 A. My baton was on his midsection. As he went into
12 the vehicle he went backwards, he was bent
13 backwards, and my baton rode up his chest.

14 Q. Onto his neck?

15 A. Not that I recall. His neck is -- my baton would
16 never be specifically in his neck for any reason.
17 It was a matter of -- I don't recall if it was in
18 his neck.

19 Q. All right. So I guess is the answer you don't
20 recall if the baton was ever on his neck while he
21 was against the car?

22 A. Yes.

23 Q. Okay. Do you know if he was trying to push the

1 baton off of his neck?

2 A. I do not know. At that time I did not know.

3 Q. And at some point after that you struck him in
4 the face with your baton, is that accurate?

5 MR. D'AQUINO: Object to the form.

6 BY MR. GLAZER:

7 Q. Do you understand the question?

8 A. As I stated earlier, at some point in time my
9 baton did strike his nose and maybe lip area.

10 Q. Okay. Well, did you swing it at him, did you hit
11 him with it? How did that happen?

12 A. That was from -- as how I stated earlier, it slid
13 up his midsection. And as he was -- had his
14 hands on my baton, there's a push and pull
15 struggle as I'm trying to turn him around to
16 place handcuffs on him. And that baton slid up
17 and kind of twisted and at that point caught his
18 -- I believe his nose, maybe his lip at that
19 time.

20 Q. So is it your testimony under oath that the baton
21 slipped onto his nose?

22 A. My testimony is that as we were struggling over
23 the baton, the baton hit him in the nose, yes.

1 Q. Okay. Well, if I asked you yes or no did the
2 baton slip onto his nose, what would your answer
3 be?

4 A. I would say no in regards to that question.

5 Q. Well, then my next question would be, if it
6 didn't slide onto his nose, how did it get onto
7 his nose?

8 A. My wording that I used earlier when we were
9 struggling over the baton was it slid up his
10 chest as he was bending backwards. And during
11 that struggle there was twisting and pulling.
12 And during that twisting and pulling, from what I
13 recall, is when that baton, the end of the baton,
14 caught him in his nose area.

15 Q. Well, did you hit him with the baton or did he
16 hit himself with the baton?

17 MR. D'AQUINO: Form.

18 BY MR. GLAZER:

19 Q. If you know.

20 A. I don't know. I'm not sure. I know there was a
21 struggle over the baton.

22 Q. Was there ever a time when your hand, your --
23 strike that. Was there ever a time when your

1 right hand was extended with the baton and your
2 baton was directly on the bridge of Mr. Belsito's
3 nose?

4 A. I believe there was a -- I believe the video does
5 show that, yes.

6 Q. Was there ever a time when your right hand was
7 extended and the baton was directly on the bridge
8 of Mr. Belsito's nose while his hands were both
9 down at his side?

10 A. I believe so, yes.

11 Q. Did the baton strike cause Mr. Belsito some
12 injury?

13 A. I believe there was an injury, yes.

14 Q. And you saw blood and such coming from his nose
15 and mouth area?

16 A. I believe it was from his nose area, once we
17 positioned him to the ground.

18 Q. Did you see a fair amount of blood?

19 A. There was blood, yes. I'm not sure -- there was
20 blood, yes.

21 Q. Was it a lot?

22 A. I would say that there was -- I wouldn't say a
23 fair amount. I would say there was an average

1 amount of blood from possibly a bloody nose.

2 Q. All right. Was the entire right side of his face
3 covered in blood?

4 A. Yes.

5 Q. So at some point Mr. Belsito was handcuffed, is
6 that true?

7 A. Yeah. I believe Deputy Flowers did handcuff him,
8 yes.

9 Q. And then at some point after that he was taken to
10 the ground, is that fair?

11 A. No.

12 Q. Okay. How did he come to be on the ground?

13 A. He was struggling at the side of the patrol car,
14 he had his phone in his hand. I believe at that
15 point in time that Deputy Flowers could not get
16 the handcuffs on him, at which time Deputy
17 Flowers made the suggestion to just take him to
18 the ground. At that point in time -- I'm sorry?

19 Q. That's what I'm asking you.

20 A. Sure.

21 Q. At some point in time --

22 A. He was taken to the ground, yes.

23 Q. Do you recall him asking you if he could put his

1 cell phone away before he was taken to the
2 ground?

3 A. I do not, no.

4 Q. Okay. When you started taking him to the ground,
5 do you recall him saying okay, okay, okay?

6 A. I do not recall that, no.

7 Q. At some point he was taken down to the ground,
8 and was he in -- well, strike that. Once you got
9 him down onto the ground, was he then handcuffed?

10 A. Yes. He was eventually handcuffed, yes.

11 Q. Do you know how long he was face down on the
12 ground in handcuffs?

13 A. I do not know how long he was face down on the
14 ground in handcuffs because there was a crowd of
15 people around us.

16 Q. Okay. Do you know if it was more or less than
17 five minutes?

18 A. I'm not sure.

19 Q. Is it more difficult to breathe when you're face
20 down with blood coming out of your nose?

21 A. I would imagine, yes.

22 Q. Let me ask you a general question.

23 A. Sure.

1 Q. If you don't understand it, just let me know.

2 A. Yes.

3 Q. Is everything you did from the time that you got
4 out of the patrol vehicle to approach Mr. Belsito
5 from behind until the time he was taken to the
6 ground consistent with the training you received
7 from the Erie County Sheriff's Department?

8 A. I would say yes.

9 Q. Let's talk about the dent in the vehicle. You
10 indicated that you pushed Mr. Belsito backward
11 into your police cruiser, is that correct?

12 A. Correct.

13 Q. Did that cause a dent to the vehicle?

14 A. Yes, it did.

15 Q. So the act of pushing his body back into the
16 vehicle and impacting the vehicle caused a dent?

17 A. Yes.

18 Q. When did you become certain of that fact?

19 A. I'm not sure. I'm not sure when.

20 Q. Well, was it on December the 3rd of 2017?

21 A. Yes. It was I believe somewhere around while Mr.
22 Belsito was on the ground to -- somewhere between
23 that and the conversation with Sergeant Dusza.

1 Q. Okay. So somewhere between the time that Mr.
2 Belsito was on the ground and the time that you
3 had the conversation with Sergeant Dusza, you
4 became certain that the dent was caused by the
5 impact when you pushed Belsito into the vehicle?

6 A. Yes.

7 Q. Did you indicate in the use of force report that
8 the dent was caused while Mr. Belsito was
9 fighting with you?

10 A. I'm not -- I don't know. I'm not sure. I'd have
11 to see the use of force report to see what
12 exactly it states.

13 Q. If you did indicate that, is that inaccurate?

14 A. I'm sorry. Repeat the question?

15 Q. If you did indicate in the use of force report
16 that the dent was caused while Mr. Belsito was
17 fighting, is that inaccurate?

18 A. It would not be inaccurate because that's how it
19 happened.

20 Q. Okay. So in your mind, pushing someone back into
21 a vehicle causing a dent is the same thing as
22 that person fighting with you?

23 MR. D'AQUINO: Object to the form.

1 BY MR. GLAZER:

2 Q. Do you understand the question?

3 A. Can you repeat the question?

4 Q. Yes. You told us a few minutes ago that the dent
5 was caused when you pushed Mr. Belsito back into
6 the vehicle and he impacted with the vehicle, is
7 that correct?

8 A. Correct.

9 Q. All right. So that's pushing somebody into a
10 vehicle and causing a dent when you slam them
11 into the vehicle, is that fair?

12 A. There was a continuous struggle, yes, that's
13 fair.

14 Q. So there was a struggle while you grabbed him
15 from behind, pushed him into the vehicle and
16 caused a dent, there was a struggle?

17 MR. D'AQUINO: You leave out some facts there, so I'm
18 objecting to the form.

19 BY MR. GLAZER:

20 Q. Okay. What would be the answer to that question?

21 A. It would be after, it would be after I grabbed
22 Mr. Belsito from behind and started my
23 conversation with him is when the -- when that

1 altercation started.

2 MR. GLAZER: Could you read that answer back for me,
3 please?

4 (Whereupon, the above-requested previous
5 answer was then read back by the reporter.)

6 BY MR. GLAZER:

7 Q. I've just got to take a step back for a minute.
8 So you grabbed Belsito with your left hand and
9 then put your right hand around his front with
10 the baton, is that correct?

11 A. Yes.

12 Q. And you were behind him, so you wouldn't have
13 known exactly where the baton was, is that true?

14 A. Well, I knew that it was around his midsection.

15 Q. Okay. And the conversation that you just
16 mentioned --

17 A. Yes.

18 Q. -- had it begun at that point?

19 A. Once I got into the -- either -- pulled him back
20 enough to get in front of him, that's when I
21 believe I stated to him back up.

22 Q. Okay. So you pulled him back enough to get in
23 front of him, and that's when the conversation

1 started, is that correct?

2 A. That's when, yeah. I told him or ordered him to
3 back up, yes.

4 MR. D'AQUINO: Can we go back to regular screen if
5 you're not using the video?

6 MR. GLAZER: I'm sorry. I apologize. Sorry about
7 that.

8 MR. D'AQUINO: No problem. Thank you.

9 BY MR. GLAZER:

10 Q. How long was it between the time that your
11 conversation started and the time that you began
12 to push him backward toward the vehicle?

13 A. Somewhere between maybe fifteen and thirty
14 seconds.

15 Q. It was over?

16 A. It was a quick incident, yes.

17 Q. So you put the baton around his neck -- I'm
18 sorry. Strike that. That's not what you said.
19 You get the baton around the front of him and
20 then you turn him to face you, is that correct?

21 A. I pulled him backwards so I could either get in
22 front of him or maneuver myself so he could see
23 at that point in time who I was.

1 Q. And then there was a conversation between you and
2 Belsito for fifteen to thirty seconds before you
3 started pushing him, is that true?

4 A. I wouldn't say the conversation lasted for
5 fifteen to thirty seconds. I would say I gave
6 him a couple verbal commands. I believe, from
7 what I recall, it was back up, back up. And then
8 I want to say that at some point he said no, why.
9 And I said back up. And at that point he was
10 like -- I believe I stated then, you're under
11 arrest. And at that point he said no, I'm not
12 and what for.

13 Q. Okay. So when was it specifically that you
14 determined you were going to arrest him during
15 that series of events?

16 A. When he -- when I pushed him backwards and told
17 him to back up, and at that point in time he
18 raised his hands up. At that point is when I
19 told him that he was under arrest.

20 Q. When you say he raised his hands up, describe the
21 manner in which he raised his hands up.

22 A. He had his like -- almost like closed fists, he
23 brought his hands up.

1 Q. Like the Fighting Irish?

2 A. I wouldn't say -- not as much as the Fighting
3 Irish, but he brought his hands up midsection,
4 closed fists.

5 Q. Okay. So how long was your exchange with him
6 where you said back up and he said no and you
7 said you're under arrest and he said what for,
8 how long was that exchange?

9 A. That would be roughly the fifteen seconds-ish I
10 would say. It was a relatively quick exchange.
11 I don't have an exact time, but that was -- it
12 was a short period of time for that exchange.

13 Q. So at that point was his back to your patrol
14 vehicle?

15 A. Yes.

16 Q. Okay. So the exchange happens, you said it was,
17 give or take, fifteen seconds. After it was
18 over, did you then begin to push him toward the
19 patrol vehicle?

20 A. Yes.

21 Q. Did you ever tell Officer -- I'm sorry, Deputy
22 Flowers that Belsito kicked the vehicle?

23 A. I did not, no.

1 Q. I'm going to show you Deposition Exhibit 11 for
2 identification, and I'm going to scrub it to
3 seventeen fifty-two fourteen. We'll start at
4 seventeen fifty-two o seven.

5 (Whereupon, video footage was played.)

6 MR. D'AQUINO: We're not seeing it.

7 MR. GLAZER: I'm sorry. Did you say something, Al?

8 MR. D'AQUINO: Yes. We're not seeing it.

9 MR. GLAZER: Oh, I'm sorry. That's a problem. Hold
10 on one second.

11 Do you see it now?

12 MR. D'AQUINO: Yes. Thank you.

13 MR. GLAZER: Thank you.

14 We're at seventeen fifty-two o three. I
15 just scrolled it back. We'll start from
16 seventeen fifty-one fifty-three.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. Do you hear Mr. Belsito at approximately
20 seventeen fifty-two twelve say I didn't touch
21 shit?

22 A. I did hear him say that, yes.

23 Q. Okay. And then do you hear Deputy Flowers say

1 you didn't kick the car, question mark? I can
2 play it again if you'd like.

3 A. Yeah, if you could play it again I can --

4 Q. No problem.

5 (Whereupon, video footage was played.)

6 BY MR. GLAZER:

7 Q. Did you hear you didn't kick the car?

8 A. Yes, I heard him say -- yes, I heard that.

9 (Whereupon, video footage was played.)

10 BY MR. GLAZER:

11 Q. Did you hear you didn't kick the car, again?

12 A. Yes.

13 Q. And then yet again, at seventeen fifty-two
14 nineteen, do you hear you didn't kick the car,
15 again?

16 A. Yes.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. Do you hear so he walked up and hit you in the
20 head with a fucking baton just because?

21 A. No, I did not hear that.

22 Q. Let's scrub it back a little bit.

23 (Whereupon, video footage was played.)

1 BY MR. GLAZER:

2 Q. Did you hear so he walked up and hit you in the
3 head with a fucking baton just because?

4 A. I did hear that, yes.

5 Q. And that was at approximately seventeen fifty-two
6 twenty-three?

7 A. Yes.

8 Q. Okay.

9 (Whereupon, video footage was played.)

10 BY MR. GLAZER:

11 Q. Hold on one second. I may have missed the part I
12 want to ask you a question about.

13 A. Sure.

14 Q. Yes, I have missed it. No, I haven't. Let's
15 keep going. We're at seventeen fifty-two
16 thirty-eight.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. Do you hear Deputy Flowers say I find that hard
20 to believe?

21 A. I heard that, yes.

22 Q. And that was at approximately seventeen fifty-two
23 forty-four.

1 A. Yes.

2 Q. Do you know how Deputy Flowers would have come to
3 believe that Mr. Belsito kicked the patrol
4 vehicle?

5 A. I don't know. The only --

6 Q. Okay. That's the only answer I need.

7 A. Okay.

8 Q. Did you tell Deputy Flowers that Belsito kicked
9 your vehicle?

10 A. I'm not sure at that point in time if I had told
11 him that I thought maybe either he kicked it or
12 it was caused during the altercation.

13 Q. But you know now that that's not the case, is
14 that correct?

15 A. Yes, now I know that that's not the case and it
16 was just a matter of just being pushed backwards.

17 Q. When did you figure that out?

18 A. I would have to say the same day, after having an
19 opportunity to kind of, you know, look at what
20 was going on with it. You know, there's a dent
21 there; there wasn't a dent there before the start
22 of my shift.

23 Q. Okay. But how did you believe at some point that

1 it was a result of a kick and then come to the
2 understanding that it wasn't a result of a kick?

3 A. Because during the struggle I'm not sure if he
4 put his foot up behind his back and like was
5 trying to kick off the car, like he was using his
6 foot to kick backwards.

7 Q. And when did you realize that he had not done
8 that?

9 A. I would say probably a little -- minutes after.
10 A couple, five minutes, five, ten minutes after
11 what you had on video there. I'm not certain on
12 the time frame, but it was sometime relatively
13 shortly thereafter the incident.

14 Q. Let me show you Deposition Exhibit 11 again. I'm
15 going to scrub it to seventeen thirty
16 twenty-four. Just give me a minute.

17 (Whereupon, video footage was played.)

18 BY MR. GLAZER:

19 Q. So at seventeen thirty twenty-five, Deputy
20 Flowers says to you did that just happen, points
21 at the dent, and you say I think so, is that
22 true?

23 A. Yes.

1 (Whereupon, video footage was played.)

2 BY MR. GLAZER:

3 Q. At seventeen thirty fifty-three, can you hear
4 somebody from the crowd yell you can get off his
5 fucking head?

6 A. I did hear that, yes.

7 Q. I'll go to seventeen thirty-two fifteen.

8 (Whereupon, video footage was played.)

9 BY MR. GLAZER:

10 Q. Is that, at seventeen thirty-two fifteen,
11 Sergeant Dusza?

12 A. Yes, it's Sergeant Dusza. It's D-U-S-Z-A, from
13 your earlier question.

14 Q. I believe we both messed that one up.

15 A. Yes.

16 Q. Seventeen thirty-two fifteen, we're looking at
17 Sergeant Dusza with the helmet and the glasses?

18 A. Yes.

19 (Whereupon, video footage was played.)

20 MR. GLAZER: I'll scroll back to seventeen thirty-two
21 ten. Bear with me.

22 (Whereupon, video footage was played.)

23 BY MR. GLAZER:

1 Q. Okay. At seventeen thirty-two eighteen, Dusza
2 asks Flowers did he do that, and Flowers says I
3 don't know, I think so, is that correct?

4 A. Yes. I believe that's what he said, yes.

5 Q. And then seventeen thirty-two twenty-six is the
6 next portion I want to ask you a question about.

7 (Whereupon, video footage was played.)

8 BY MR. GLAZER:

9 Q. Seventeen thirty-two twenty-six, Dusza says
10 Kenny, did he dent the fucking fender, and you
11 respond yeah, is that correct?

12 A. Yes. That's correct, yes.

13 Q. So by seventeen thirty-two twenty-seven, you had
14 determined that Nick caused the dent in the
15 fender, correct?

16 A. Yes, that's correct.

17 Q. Do you have a system in your vehicle that --
18 well, strike that. Do you have a system in your
19 vehicle computer known as CHARMS?

20 A. Yes.

21 Q. Or did you, rather?

22 A. Yes.

23 Q. And did CHARMS assist you in the drafting of

1 accusatory instruments?

2 A. Yes.

3 Q. Okay. Who drafted the accusatories regarding the
4 charges levied against Mr. Belsito?

5 A. I did.

6 Q. Did Flowers participate in the drafting of the
7 accusatories?

8 A. There was discussion prior to drafting of the
9 accusatories, but the answer to your question
10 would be no.

11 Q. Okay. So you discussed the accusatories with
12 Flowers, but you drafted them, correct?

13 A. Yes.

14 Q. Did you have enough time to draft the
15 accusatories properly?

16 A. No, I did not.

17 Q. Okay. Explain that to me.

18 A. Well, there was a matter of circumstances of the
19 day, there was a matter of getting Mr. Belsito
20 and Mr. Lowry down to the holding center, there
21 was a matter of the computer in the car not
22 properly working and trying to get the documents
23 either to type up or to print off, because those

1 documents needed to go to court immediately in
2 the event of an arraignment. And at that point
3 in time we ended up I believe going out to the
4 Town of Alden to a substation where they had a
5 printer that was working that we could do the
6 draft documents and then get back to the stadium
7 because of being shorthanded.

8 Q. So how much time did you have to draft these
9 accusatories?

10 A. I'm not certain on the amount of time. I just
11 recall being hurried later in the day when we
12 were doing it.

13 Q. How long does it typically take you to draft a
14 violation level information on a complaint?

15 A. Five minutes or so, as long as everything is
16 working properly with the equipment.

17 Q. So you didn't have five minutes to draft these
18 properly?

19 A. Five minutes for the disorderly conduct. I would
20 say it was more than five minutes to do it, yes.

21 Q. I'm confused. How long does it take to draft a
22 typical disorderly conduct complaint?

23 A. Well, to complete it, there's more than just

1 drafting the document, I guess if you're -- if
2 that's the question you're asking me, there's a
3 process to the arrest process, and it takes some
4 time to complete to get everything done so you
5 can get it to court.

6 Q. That's not what I'm asking. What I'm asking
7 you --

8 A. Can you just repeat the question, then?

9 Q. Sure. At some point you arrest people in the
10 course of your employment, is that correct?

11 A. Yes.

12 Q. Once they're arrested and in the back of your
13 car, you have to draft an accusatory, is that
14 correct?

15 A. Yes.

16 Q. And you have a system in your vehicle that
17 assists you in doing that called CHARMS, right?

18 A. Yes.

19 Q. Okay. How long does it take you to draft the
20 typical disorderly conduct complaint?

21 A. I would say an average between five and ten
22 minutes.

23 Q. And your testimony under oath is that you didn't

1 have enough time to properly draft these
2 accusatory instruments?

3 A. I believe I stated that I was rushed to get them
4 done to get back to the stadium under the set of
5 circumstances that day.

6 Q. And what was the result of your being rushed,
7 were they affected in some way?

8 A. I don't believe that they were affected in
9 regards to what I put down as to what has
10 happened, but it's, I mean, it's -- there's been
11 an outcome because of it that was -- negatively
12 impacted me.

13 Q. So the outcome that's been effectuated is because
14 you didn't have enough time to draft the
15 accusatories?

16 MR. D'AQUINO: Object to the form.

17 BY MR. GLAZER:

18 Q. Is that what you're saying?

19 A. I'm stating that I, under the set of
20 circumstances, I rushed through those documents.

21 Q. Okay. But is your testimony that the fact that
22 you didn't have enough time to draft these
23 accusatories, did that cause you to be charged

1 and then convicted?

2 MR. D'AQUINO: Object to the form.

3 THE WITNESS: I guess what I'm stating, to answer
4 your question, is that there was a negative
5 outcome because of -- apparently because of those
6 charging documents.

7 BY MR. GLAZER:

8 Q. Is that the only reason for the negative outcome?

9 A. I'm not sure what you're like -- the only reason
10 as to what?

11 Q. Well, what's the negative outcome that you're
12 referring to?

13 A. That I was charged.

14 Q. Okay. Do you think you had anything to do with
15 your being charged?

16 A. Do I -- no, I do not.

17 Q. You think you did nothing wrong at all?

18 A. I think that I acted that day and effected an
19 arrest, yes. I think I did -- under the set of
20 circumstances, that no, I did not do anything
21 wrong that day.

22 Q. Everything you did that day was consistent with
23 your training?

1 A. Yes.

2 Q. Okay. Let's just talk a bit more about CHARMS.
3 When you draft accusatories using CHARMS, you
4 input the section number, am I correct, of the
5 offense?

6 A. No. From what I recall, you -- give me a minute
7 here to think about this. You put in -- I think
8 you like search the charge and then it comes up,
9 and then you select on the charge and that you're
10 filling in the narrative of the body of the
11 instrument or the charging instrument.

12 Q. I didn't ask you a specifically tailored
13 question. That's my fault. That's exactly what
14 I'm saying. You look for a charge and you input
15 the charge into the computer, you select it, is
16 that fair?

17 A. Yes. That's fair, yes.

18 Q. And then does the computer then populate the
19 screen with the statutory language?

20 A. Yes, it does.

21 MR. GLAZER: Okay. So let's look at -- Sue Ann, can
22 we go off the record for one second?

23 THE VIDEOGRAPHER: It is five-forty-four p.m. Going

1 off the record.

2 (Discussion off the record.)

3 THE VIDEOGRAPHER: Five-forty-five p.m. We are back
4 on the record.

5 BY MR. GLAZER:

6 Q. Mr. Achtyl, I'm going to show you Deposition
7 Exhibit 7 again, for identification. These are
8 the accusatories, true?

9 A. Yes.

10 Q. All right. So when you select the charge that
11 you're going to levy, you indicated to me that
12 the computer populates the statutory language
13 into the screen, is that fair?

14 A. That's fair, yes.

15 Q. All right. And the statutory language in this
16 criminal mischief complaint is what we see in all
17 caps, correct?

18 A. Correct.

19 Q. After you drafted the accusatories, did you
20 discuss them with Deputy Flowers?

21 A. No.

22 Q. Who drafted the use of force report?

23 A. I did.

1 Q. Did he assist you?

2 A. No, he did not.

3 Q. Did you discuss it with him afterward?

4 A. Not that I recall.

5 Q. Back to Deposition Exhibit 7 for identification.

6 We've agreed that the all caps portion is the
7 information populated into the accusatory by the
8 computer automatically, is that fair?

9 A. Yes.

10 Q. So let's go up to -- down, rather, to the
11 disorderly conduct charge. So is it fair to say
12 that when you selected disorderly conduct, 240.20
13 subdivision 1 of the Penal Law of New York State,
14 that the computer automatically populated into
15 the accusatory, quote, the said Defendant, at the
16 aforesaid time and place, with intent to cause
17 public inconvenience, annoyance or alarm, or
18 recklessly creating a risk thereof, did engage in
19 fighting or in violent, tumultuous or threatening
20 behavior? Is that what it says?

21 A. Yes.

22 Q. So that was automatically inputted by the
23 computer, is that fair?

1 A. Yes.

2 Q. All right. What would you define violent as?

3 A. Violent could be anything from raising your fist
4 to physically fighting to pretty much upwards of
5 serious actions, crimes, shootings, stabbings,
6 any kind like that. It's violence.

7 Q. If I told you that Webster's defines violent as,
8 quote, using or involving physical force intended
9 to hurt, damage or kill someone or something,
10 would you have reason to disagree with that?

11 A. No, I would not.

12 Q. What does tumultuous mean?

13 A. More of like a chaotic type of behavior or --

14 Q. That's pretty good. I don't know that I would
15 have been able to answer that. But if I told you
16 that Webster's defines tumultuous as, quote,
17 making a loud, confused noise, uproarious, close
18 quote, would you have a reason to disagree with
19 that?

20 A. No, I would not.

21 Q. All right. So we know that violent and
22 tumultuous or threatening behavior was
23 automatically inputted by the computer, is that

1 correct?

2 A. Yes.

3 Q. Those aren't your words, is that true?

4 A. That's true.

5 Q. And then there's a to wit portion?

6 A. Correct.

7 Q. What does to wit mean?

8 A. To wit means what substantiates or what took
9 place.

10 Q. To wit means what took place?

11 A. Yes. Like your narrative of the charge. To wit,
12 what's coming forth I guess.

13 Q. And is that where you describe the arrestee's
14 conduct?

15 A. Yes.

16 Q. In your use of force report, do you indicate that
17 Mr. Belsito was swinging his fists?

18 A. I'm not sure. I don't recall.

19 Q. Let me show it to you.

20 Can you see the document that's up on the
21 screen right now?

22 A. I see a blue version of disorderly conduct.

23 Q. Okay. Hold on one second.

1 Can you see another blue document now that
2 says Orchard Park Town Court on the top?

3 A. Yes.

4 Q. Okay. I'll scroll down to page two. Do you see
5 Erie County Sheriff's Office use of firearms
6 slash force report?

7 A. Yes.

8 Q. All right. I'm going to scroll down here. Third
9 line in the narrative. Starting on the second
10 line. Defendant did become combative towards
11 reporting deputy by swinging Defendant's arms and
12 fists towards reporting deputy.

13 A. Yes.

14 Q. Did I read that accurately?

15 A. That is correct.

16 Q. So in your use of force report you indicated that
17 Mr. Belsito was swinging his fists at you, is
18 that fair?

19 A. I believe I testified earlier to our initial
20 encounter that there was fists raised up, yes.

21 Q. Okay. Fists raised up. Did Mr. Belsito swing
22 his fists at you when he raised his fists up?

23 A. His arms were swinging up and down when I pushed

1 him backwards with the baton.

2 Q. Okay. Well, I'm talking about what you just
3 testified to, which was when Mr. Belsito put his
4 fists into the air, as you called it. That was
5 before you started to push him, is that correct?

6 A. I'm sorry. Can you just ask that question again?
7 I kind of lost what --

8 Q. Let's start from the beginning.

9 A. Sure.

10 Q. In your use of force report, did you indicate
11 that Mr. Belsito was swinging his arms and fists
12 toward the reporting deputy?

13 A. Yes.

14 Q. And you're the reporting deputy, is that correct?

15 A. Yes.

16 Q. So when was it that Mr. Belsito swung his fists
17 at you?

18 A. During our encounter that -- after I grabbed to
19 pull him backwards. And it was during that
20 encounter that he raised up his fists and then he
21 would be pushed back and he would raise up and
22 swing his arms up again.

23 Q. When did he swing his fists?

- 1 A. When he raised his fists up in the air and I
2 pushed him backwards and he raised them up again,
3 I would say that -- I mean, that would be
4 swinging to me. He's swinging his arms down,
5 they're coming back up, he's swinging his arms
6 down, they're coming back up. That's what I
7 interpreted as swinging.
- 8 Q. So when a person raises up his arms in the air,
9 that's the same thing as swinging a fist?
- 10 A. Yeah. He brought his fists up. They came
11 upwards. You know, he was swinging them upwards,
12 they went back down, he was swinging upwards
13 again.
- 14 Q. Did he bring his fists up or did he swing them?
- 15 A. I would say he did both.
- 16 Q. Okay. Explain to me how he did that.
- 17 A. Because his arms were swinging up from where they
18 were at down by his side, coming up. I mean,
19 that was a swinging motion upwards.
- 20 Q. Like he was doing a curl?
- 21 A. I wouldn't say you curl with your fists closed.
22 It was more of a --
- 23 Q. I'm just asking about the motion. Sorry.

1 A. Sure.

2 Q. I'm just trying to figure out what in the world
3 you're talking about. Are you --

4 MR. D'AQUINO: Hold on. Can we just skip the
5 editorializing, please, and just ask a question?

6 MR. GLAZER: It's just if I would get an answer it
7 wouldn't be so frustrating.

8 BY MR. GLAZER:

9 Q. You've conceded that in your use of force report
10 you indicated that Mr. Belsito was swinging his
11 fists, is that correct?

12 A. Correct.

13 Q. You used the word fists, true?

14 A. Used the word fists, yes.

15 Q. And by fists you mean closed hands, correct?

16 A. Yes.

17 Q. Can you see what you're talking about anywhere on
18 Deputy Flowers' body cam footage?

19 A. No, you cannot.

20 Q. Okay. Fists is an important detail, is that
21 true?

22 A. Yes. That's why I included it in the use of
23 force report.

1 Q. Right. Did you include fists or the word fists
2 anywhere in any of the accusatories that you
3 drafted?

4 A. I don't recall without seeing them.

5 Q. All right. I can show them to you.

6 Start with the criminal mischief in the
7 fourth degree. Can you see the narrative up on
8 the screen?

9 A. I see you right now.

10 Q. That's not good. Hold on.

11 Can you see it now?

12 A. I can see, yes. Criminal mischief, yup.

13 Q. I'll give you as much time as you need. Let me
14 know if you ever mention the word fist in that
15 narrative.

16 A. I just can't read what's at the right of my
17 screen because of the videos. I guess I can
18 minimize them without losing it.

19 Q. How about that?

20 A. Is that fair?

21 Yeah, that's better.

22 Q. Okay.

23 A. I've read it.

1 Q. Do you see the word fists in there?

2 A. I do not see the word fists.

3 Q. I'll scroll down now to the obstruction charge.
4 I pulled up the narrative for you. Can you see
5 that?

6 A. Yes.

7 Q. Is the word fists in there?

8 A. Is there a way you can just move it over a little
9 bit? I'm missing the words under the --

10 Q. Do you want me to move it to the left or the
11 right?

12 A. To the left I would say, my left, whatever that
13 means for you.

14 Q. Is that working or is that the wrong way?

15 A. That's better, yes. Thank you.

16 Q. Tell me if you see fist.

17 A. I do not see the word fist.

18 Q. I'm going to scroll down to the disorderly
19 conduct charge. And I want to represent to you
20 that the word fist is nowhere in that accusatory,
21 but if you'd like to look at it for yourself and
22 confirm that for me, that's fine with me.

23 A. The only -- that's correct, the word fist is not

1 there.

2 Q. Okay. And lastly, the resisting arrest
3 accusatory, 205 point 30 of the Penal Law, did
4 you indicate anywhere in this resisting arrest
5 complaint the word fist?

6 A. I do not see the word fist.

7 Q. Let me ask you a couple questions about the dis
8 con. You and I know what that means, disorderly
9 conduct. We agreed already that the information
10 in all caps is automatically populated into the
11 accusatory by the computer, is that fair?

12 A. That's fair.

13 Q. And the portion where you indicate the conduct
14 starts with while deputies were attempting, is
15 that fair?

16 A. Correct.

17 Q. You say while deputies were attempting to process
18 a separate arrest in the bus parking lot of
19 Buffalo Bills stadium, the Defendant did approach
20 a marked Erie County Sheriff's patrol car asking
21 where his friend was going, and after deputies
22 provided the Defendant the information, being the
23 Erie County Holding Center, the Defendant did

1 refuse to leave the area, and when the Defendant
2 did back away from the patrol car, the Defendant
3 did yell profanities, at which time deputies
4 advised the Defendant he was under arrest for
5 disorderly conduct.

6 Did I read that properly?

7 A. Yes, you did.

8 Q. Okay. So this accusatory indicates that the
9 Defendant yelled profanities, at which time you
10 advised him he was under arrest for disorderly
11 conduct, is that true?

12 A. That's what it states, yes.

13 Q. Okay. It doesn't say anything about your
14 conversation after you grabbed him from behind,
15 is that correct?

16 A. It does not, no.

17 Q. One more question about the use of force report.
18 Did you indicate in the use of force report that
19 the dent in your vehicle was caused when you
20 pushed Mr. Belsito back into your vehicle, which
21 would be consistent with your testimony today?

22 A. I would have to say yes, I did.

23 Q. Did you talk to Deputy Flowers after the arrest

1 at any length about the arrest?

2 A. There was, from what I recall, there was a
3 discussion in regards to the charging
4 instruments. We had a discussion in the car on
5 the way downtown, if that's what you're referring
6 to.

7 I'm sorry?

8 Q. I'm not really referring to anything. I'm just
9 trying to get information.

10 A. Sure.

11 Q. So that's a fair answer.

12 A. Right.

13 Q. Was Flowers in agreement with all of the charges
14 that were levied?

15 A. Yes, because he signed his name to the charging
16 paperwork.

17 Q. Did he voice any concerns to you about the
18 arrest?

19 A. No, he did not.

20 Q. Following the incident, did you discuss it with
21 Sheriff Howard?

22 A. Not that I recall.

23 Q. Up until the date of the criminal trial, which

1 we've already established, did you ever discuss
2 the matter with Sheriff Howard?

3 A. Not that I recall.

4 Q. Following the arrest, did you take Mr. Belsito
5 for medical treatment?

6 A. Yes.

7 Q. Okay. And that's because he had some injuries,
8 that you discussed before?

9 A. Yeah. I think there was an offer of -- twice on
10 the scene and then once to Southside Medical.

11 Q. And he refused at some point?

12 A. He refused initially. I believe, my memory from
13 the video, if I recall, and initially from my
14 memory, that he refused twice at the scene with
15 Deputy Dusza, who is a medic, the Windom Fire
16 Department, who had their -- and possibly even --
17 I'm not sure if Rural Metro was there on the
18 scene when it came to the volunteer ambulance,
19 and then at Southside Medical.

20 Q. I'm just asking you if he refused --

21 A. Sure.

22 Q. Mr. Achtyl, just so that we're clear, at some
23 point, whether it was once or twice or how many

1 times, Mr. Belsito did refuse medical treatment?

2 A. Yes, he did.

3 Q. Did it appear to you that he was pissed, that he
4 was angry?

5 A. Yes.

6 Q. And he's bloody at that point, is that fair?

7 A. Yes.

8 Q. At some point after he did get the treatment that
9 we've discussed, did he -- did you, rather,
10 transport him with Deputy Flowers to the Erie
11 County Holding Center?

12 A. Yes.

13 Q. And he was confined in handcuffs at that time, is
14 that correct?

15 A. Yes.

16 Q. And confined to the rear of your police cruiser?

17 A. Yes.

18 Q. And Deputy Flowers was driving at that time, is
19 that correct?

20 A. Correct.

21 Q. Do you know if Mr. Belsito was belted at that
22 time?

23 A. I'm not sure.

1 Q. Have you heard of the professional standards
2 division of the Erie County Sheriff's Department?

3 A. Yes.

4 Q. Can you tell me what it is?

5 A. Professional standards would be the I guess
6 internal investigations that take place within
7 the department.

8 Q. Okay. Do you know if the December the 3rd of
9 2017 incident at the Bills stadium was
10 investigated by the internal affairs division, as
11 you term it?

12 A. I'm not aware.

13 Q. Did they ever meet with you?

14 A. No, they did not.

15 Q. Did anyone ever take a statement from you with
16 regard to the 12/3 of '17 incident?

17 A. No, they did not.

18 Q. Were you ever -- well, strike that. Do you know
19 what a Garrity letter is, G-A-R-R-I-T-Y?

20 A. Yes.

21 Q. Did you ever get a Garrity letter in connection
22 with this incident?

23 A. Not that I recall.

1 Q. Okay. Is it your understanding that all of the
2 charges, each and every one of the charges
3 against Mr. Belsito, were eventually dismissed?

4 A. Yes.

5 Q. If I told you that that happened in June of 2018,
6 would you have a reason to disagree with that?

7 A. I'm not -- no, I would not have a reason to
8 disagree with you. I'm not sure when they were
9 dismissed.

10 Q. And at some point you were charged with a variety
11 of criminal offenses regarding the 12/3 of '17
12 incident, is that correct?

13 A. Yes.

14 Q. Were you charged with official misconduct?

15 A. Yes.

16 Q. And were you charged with assault in the third
17 degree?

18 A. Yes.

19 Q. Were you charged with falsifying business records
20 in the second degree?

21 A. Yes.

22 Q. And as we've discussed, were those charges tried
23 to a jury between the 17th of September and the

1 23rd of September, 2019?

2 A. Yes.

3 Q. Did the jury convict you on the 27th of those
4 three counts?

5 A. Yes.

6 Q. Maybe ten more minutes.

7 A. Okay.

8 Q. Thank you.

9 Did -- well, strike that. We talked about
10 Sheriff Howard's presence at your trial. And did
11 you indicate to me whether or not he was in
12 uniform when you would see him there?

13 A. I believe he was in uniform.

14 Q. Did he stay the whole day each and every day that
15 he was there?

16 A. I'm not sure. I don't recall.

17 Q. We discussed the times that you spoke with the
18 sheriff during your criminal trial. And refresh
19 my recollection. Did you ever go outside the
20 building to talk to him or into your car or into
21 a private room or anything like that?

22 A. No.

23 Q. Do you have Sheriff Howard's cell phone number?

1 A. I don't believe so.

2 Q. Have you ever called or texted Sheriff Howard on
3 his cell phone?

4 A. I don't recall.

5 Q. Is there a possibility that you have done that?

6 A. It's possible, yes.

7 Q. When would that have been?

8 A. It would have been after my conviction.

9 Q. What did you text or call him about after your
10 conviction?

11 A. From what I can recall, it wasn't a matter of me
12 -- he might have texted me. And in regards to
13 like how I was doing, what was going on, you
14 know, if there was -- what he may have thought of
15 like possible grounds for an appeal type of
16 stuff.

17 Q. Do you still have those -- I'm sorry. Go ahead.

18 A. I don't believe I still have them, no.

19 Q. If you do, I'm just asking that you keep them and
20 not delete any of those from your phone.

21 How many --

22 A. I believe I changed my cell phone since then, so
23 I don't think I have them anymore, but if I do

1 have them I have no problem saving them.

2 Q. When did you change your cell phone?

3 A. Well, I believe I upgraded in possibly August of
4 last year.

5 Q. August of 2020?

6 A. No. Wait a second. I'm sorry. I don't recall
7 now. It was either August of 2020 or August of
8 -- no, it wouldn't have been August of 2019. It
9 would have been August of 2020.

10 Q. So you now have a different physical cell phone,
11 is that what you're saying?

12 A. Yeah. I upgraded from an iPhone 7 or 8 to an
13 iPhone 11.

14 Q. Do you still have the same number?

15 A. Yes, I do.

16 Q. And the same provider?

17 A. Yes.

18 Q. Okay.

19 A. I did switch providers for about twenty days, and
20 then I found out that the carrier that I switched
21 to, their coverage wasn't sufficient.

22 Q. What carrier -- I'm sorry. Go ahead.

23 A. I believe it was Sprint.

1 Q. So for approximately twenty days you had Sprint
2 as a carrier as opposed to Verizon?

3 A. Correct.

4 Q. When you were with Sprint, did you have the same
5 phone number?

6 A. Yes.

7 Q. Give me your best estimate as to when this
8 twenty-day period was.

9 A. Sometime around the end of -- either the end of
10 July or the end of August of 2020.

11 Q. How many times do you believe the sheriff texted
12 you after the criminal trial was over?

13 A. I don't have a number.

14 Q. More or less than five times?

15 A. I would say yes.

16 Q. More or less?

17 A. I'm sorry. I heard you say more than five times.
18 Yes, I would say more than five times.

19 Q. More than ten times?

20 A. I would say it was roughly around -- could be
21 around that amount. I don't know.

22 Q. Did these texts come on different days or on the
23 same day?

1 A. I would say they were different days.

2 Q. If this incident had never taken place, how long
3 had you intended to work for the sheriff's
4 department?

5 A. I would say roughly twenty-four, twenty-five
6 years total. Not for the sheriff's office but
7 total with my previous time, if that makes any
8 sense. So from 1995 when I started in law
9 enforcement to whatever twenty-five years after
10 1995 is.

11 Q. That's 2020.

12 A. 2020, 2021-ish.

13 Q. Okay. So you were intending to cease employment
14 from or with the sheriff's department right
15 around now, is that fair?

16 A. Yeah. I would say that's a fair surmise, yes.

17 Q. What's the reason that you were going to do that?

18 A. Well, to do something different I guess you could
19 say, start a second career.

20 Q. Such as what?

21 A. I mean, I didn't have a specific career in mind
22 at the time.

23 Q. Are you working?

1 A. I'm sorry. What?

2 Q. I'm cutting you off. Go ahead.

3 A. I'm sorry. I didn't hear your --

4 Q. I was just going to ask you, are you working now?

5 A. Yes, I am.

6 Q. What are you doing?

7 A. I work for -- well, I'm a data annotation
8 specialist.

9 Q. Whereabouts?

10 A. For Tesla.

11 Q. Do you like it?

12 A. It's different. Yes. Yes.

13 Q. So you just told me that you were going to work
14 twenty-four or twenty-five years and that was
15 your plan, is that correct?

16 A. Yes. My rough plan, yes.

17 Q. All right. And you told me that was including
18 time from 1995 to 2000, is that fair?

19 A. Yes.

20 Q. So you got some County time in during those
21 years?

22 A. I'm not sure what you mean by County time.

23 Q. Well, you said including your time between '95

1 and 2000. What did you mean by including your
2 time from '95 to 2000?

3 A. My previous time from those departments.

4 Q. Was your previous time in those departments in
5 the same pension system as the County job?

6 A. I'm not sure how -- it was in the same -- it was
7 a different tier I guess, to try to explain it
8 properly. There's police and fire and then
9 there's a different tier that the sheriffs fall
10 under. Very similar, yes. So time was
11 transferred over, yes.

12 Q. So am I to understand that to mean, then, that
13 you received credit for time worked before you
14 went into the sheriff's department?

15 A. Yes.

16 Q. In terms of your current pension with the
17 sheriff's department?

18 A. Yes.

19 Q. So in 2000, you started as if you'd been working
20 for the sheriffs for five years in a way?

21 A. I wouldn't agree to your statement. I would say
22 that I started with time in the New York State
23 retirement system, yes.

1 Q. Okay. So was the '95 to 2000 employment in the
2 New York State retirement system?

3 A. Yes.

4 Q. And was the 2000 to 2019 time in the New York
5 retirement system?

6 A. Yes.

7 Q. Okay. So same system from '95 to 2019?

8 A. Same system, yes. But it's a different tier,
9 yes.

10 Q. Okay. So does the tier change from twenty-four
11 years to twenty-five years?

12 A. I'm not sure exactly what you're asking me.
13 Twenty-four, twenty-five of the tier?

14 Q. Here's what I mean. If I retire from the state
15 system with twenty-four years in versus
16 twenty-five years in, am I doing myself a
17 disservice in terms of my pension?

18 A. Yes, because it's an additional year you could
19 work and there's -- however the state retirement
20 system figures it out, there is additional credit
21 for working longer, yes.

22 Q. So if this incident had not happened, can we
23 agree that you would have continued to work for

1 the sheriff's department for some period of time?

2 A. I would say yes. For a short period of time,
3 yes.

4 Q. How much time would you say?

5 A. Maybe roughly two to three years.

6 Q. Okay. Are you collecting a pension now based on
7 your employment at the sheriff's department?

8 A. I am collecting a New York State retirement, yes.

9 Q. All right. And officially you've resigned from
10 the Erie County Sheriff's Department, is that
11 correct?

12 A. That is correct, yes.

13 Q. Were you receiving benefits from the sheriff's
14 department up until the day of your resignation?

15 A. Yes.

16 Q. Okay. No salary but some benefits?

17 A. I had to pay my own benefits after I was arrested
18 in May, if I recall correctly.

19 Q. Did you receive salary up until the time you were
20 -- well, that's not my question. Strike that.

21 Did you receive salary after you were arrested?

22 A. No, I did not.

23 Q. When did you resign?

1 A. I believe it was the week of my trial.

2 Q. Do you know what day?

3 A. Towards the end of my trial maybe.

4 Q. Was it before the verdict?

5 A. I don't recall.

6 Q. If I told you that the database reflects that you
7 resigned on 9/26 of '21 (sic), would you have a
8 reason to disagree with that?

9 A. No, I would not.

10 Q. And if I told you that that was the day before
11 the jury returned the verdict in your criminal
12 trial, would you have a reason to disagree with
13 that?

14 A. No, I would not.

15 Q. So you resigned from a job you intended to work
16 for another three years before you knew what the
17 jury's verdict was?

18 A. I resigned --

19 Q. I apologize for interrupting you, but when I ask
20 you that question, it sounds like a yes or no
21 question to me. So if you want to elaborate, Mr.
22 D'Aquino can ask you a further question.

23 A. Fair enough. I was getting ready to give you my

1 answer and I was trying to respond to you, you
2 cut me off. I apologize that I didn't come quick
3 enough, but --

4 Q. Hold on one second. Just try to respond to my
5 question with a yes or no.

6 A. Fair enough.

7 MR. GLAZER: Please read the question back.

8 (Whereupon, the above-requested question at
9 page 273, line 15, was then read back by the
10 reporter.)

11 BY MR. GLAZER:

12 Q. Is your answer yes or no?

13 A. Yes.

14 Q. Did you resign by letter?

15 A. I believe I did, yes. I'm not sure.

16 Q. When and where did you draft the letter?

17 A. Honestly, I don't recall. I don't recall.

18 Q. Did someone else write it for you?

19 A. No.

20 Q. Whom did you deliver the letter to?

21 A. I don't recall if it would have been Chief
22 Greenan at the time. I'm not sure. He would
23 have been the personnel, in charge of

1 administrative stuff.

2 Q. Did you deliver it in person?

3 A. Yes, I delivered it in person.

4 Q. Prior to your resignation, did you discuss your
5 resignation specifically with Sheriff Howard?

6 A. Not with Sheriff Howard that I recall, no.

7 Q. Did you discuss your resignation -- well, let me
8 ask a clearer question. Strike that, please.

9 Prior to your resignation, did you discuss your
10 resignation with the undersheriff?

11 A. I'm sorry. Prior to -- could you just repeat the
12 question?

13 Q. Prior to your resignation, did you discuss it
14 with the undersheriff?

15 A. Yes, I did.

16 Q. What was the discussion regarding?

17 A. It was earlier in the year, in regards to what
18 the outcome would be under the -- what charges
19 were placed against me, if they were violations
20 or misdemeanors and if I could continue to work
21 or not.

22 Q. Was there an agreement between you and the
23 sheriff that if you were convicted your

1 resignation would be effective the day before the
2 verdict?

3 A. With the sheriff, no.

4 Q. Was there an agreement with someone from the
5 sheriff's department that if you were convicted
6 your resignation would be effective the day
7 before the verdict?

8 A. I wouldn't say there was an agreement. I believe
9 I understood that what -- if there was a negative
10 outcome, what the consequences would be, so I
11 offered a resignation letter at that point in
12 time.

13 Q. So there was an agreement that if you got
14 convicted your resignation would be effective the
15 day before?

16 A. I wouldn't say there was an agreement for the day
17 before, no, but that would be -- I wouldn't be
18 able to continue working.

19 Q. Well, you said that you discussed your
20 resignation with the undersheriff and that you
21 discussed the ramifications of the charges. And
22 we've confirmed that you resigned effective the
23 day before the jury verdict. Is that all fair?

1 A. Yes.

2 Q. Okay. Did you resign because you believed you
3 were going to be convicted?

4 A. There was a few reasons why I chose to resign and
5 move forward.

6 Q. What were they?

7 A. Well, I was -- in August of 2018 I was involved
8 in an officer-involved shooting where the subject
9 was shot and he survived. That took a lot of
10 toll on me. In regards to this incident as well.
11 I kind of made a decision -- it got to a point
12 where I have family and I've been doing this job
13 for, at that point in time, close to twenty-five
14 years, and I made a decision maybe it's time to
15 move forward.

16 Q. But you indicated that if this incident had not
17 taken place you would have worked another two to
18 three years?

19 A. Yes.

20 Q. And you confirmed for me that your resignation
21 was effective the day before the jury verdict, is
22 that correct?

23 A. Yes. Yes.

1 Q. Did you talk with anybody from the sheriff's
2 department about backdating your resignation
3 letter?

4 A. I did not, no.

5 Q. Do you know how your pension would have been
6 affected had you been fired as opposed to
7 resigning?

8 A. I am not sure, but I don't think there would have
9 been an effect on it.

10 Q. Zero effect, firing versus resigning?

11 A. I believe if you have the time in the system, at
12 any time you can retire. I believe that's how it
13 works. I'm not sure.

14 Q. Okay. You're not sure it sounds like?

15 A. I'm sorry?

16 Q. Is you're not sure the answer?

17 A. I'm not sure, but I don't believe it's affected.

18 Q. If you had been acquitted, would you have
19 returned to the sheriff's department?

20 A. That's a hard question to answer. I honestly
21 don't know. There's a good possibility that I
22 would have went and done something else, and
23 there's a possibility that I may have returned

1 and maybe asked to do something different within
2 the department.

3 Q. So when did you make the decision to resign?

4 A. I think it was the week of the trial. As I
5 stated and testified earlier, there was the -- if
6 you want to call it a near-death incident where I
7 was involved, and then received an award for
8 doing that in December, and then a week later I'm
9 up on the news reels everywhere. I would have to
10 say that week of the trial I thought pretty hard
11 about it.

12 Q. All right. Do you know what day it was during
13 the trial that you made --

14 A. I do not know what day it was. I could not tell
15 you that. The weight of the trial and everything
16 that I went through previously, it was a great
17 weight. And I don't know what day I came to a
18 conclusion that I maybe could do something
19 different.

20 Q. Were you sentenced on the criminal convictions in
21 January of 2020, was it?

22 A. I believe that sounds accurate, yes.

23 Q. And after you were sentenced, was Sheriff Howard

1 publicly critical of your behavior during the
2 incident?

3 A. I don't know. I'm not sure.

4 Q. If I told you that he was, would that surprise
5 you?

6 A. No, it wouldn't surprise me.

7 Q. Did the sheriff tell you after the trial in any
8 of those text messages that he disagreed with the
9 jury's verdict?

10 A. I don't recall. I don't recall if it was a -- if
11 he came out and said those words.

12 Q. Are you aware that the Plaintiff's lawsuit is
13 seeking what are called punitive damages?

14 A. I guess so, yes.

15 Q. Has the County advised you whether or not they'll
16 cover punitive damages --

17 MR. D'AQUINO: I don't think that's a permissible
18 question at this point.

19 MR. GLAZER: Are you directing him not to answer it?

20 MR. D'AQUINO: Yes, I am.

21 MR. GLAZER: Can you index that for -- I stuttered.
22 Can I just ask the question again so it's on the
23 record?

1 MR. D'AQUINO: Sure.

2 BY MR. GLAZER:

3 Q. Don't answer the question, please.

4 A. Okay.

5 Q. Has the County advised you whether they will
6 cover you for punitive damages if a punitive
7 verdict is rendered? Mr. D'Aquino has directed
8 his client not to answer that question.

9 Are you aware that you have no insurance
10 coverage for punitive damages?

11 MR. D'AQUINO: I don't know what the relevance of
12 that is to the complaint that you've stated
13 against him. If you can state it, I'll consider
14 it, but it sounds like you're going way beyond
15 what you need to prove to prove your case.

16 MR. GLAZER: I have two questions more about this. I
17 don't know that I need to disclose what I think
18 the relevance is to you. I understand why you're
19 making an objection, but it has got to be either
20 form, privilege or palpably improper and direct
21 him not to answer.

22 MR. D'AQUINO: Since the question directly relates to
23 after you've sued him and what has been discussed

1 with him about the circumstances of the suit, I
2 don't think it's proper and I'm going to direct
3 him not to answer.

4 MR. GLAZER: Okay. Are you aware -- and this is my
5 last question in this regard, Mr. D'Aquino.

6 BY MR. GLAZER:

7 Q. Are you aware that if a jury returns a punitive
8 award against you, that the money will have to be
9 paid by you personally?

10 A. I'm not aware of that.

11 MR. D'AQUINO: Same objection. That's not something
12 that he has to answer.

13 MR. GLAZER: All right. We haven't had too many
14 issues. So we'll have an index.

15 BY MR. GLAZER:

16 Q. Wrapping up, Mr. Achtyl, who is Adam Day?

17 A. He is a deputy with the sheriff's office.

18 Q. Is he a friend of yours?

19 A. I would say that everyone I worked with I had a
20 friendship with at the sheriff's office.

21 Q. Okay. So if he's one of the sheriffs, then he's
22 your friend?

23 A. I would say yes.

1 Q. Have you ever socialized with Mr. Day outside of
2 the sheriff's department?

3 A. Not that I recall.

4 Q. Do you have his phone number?

5 A. I am not sure. I don't know.

6 Q. Have you ever called him on the phone?

7 A. No, I have not.

8 Q. Has he ever called you on the phone?

9 A. Not that I'm aware of, no.

10 Q. Would you guys ever have occasion to text each
11 other?

12 A. I would have to answer your question by saying
13 that years prior, years prior when he was working
14 as a patrol deputy, there may have been occasions
15 to either talk or text while working in that
16 capacity.

17 Q. Just small talk?

18 A. Work related conversation.

19 Q. Would you say that Adam Day is a good deputy?

20 A. If you're looking for a yes or no answer, I
21 really don't -- I mean, he was promoted. If he
22 was promoted, I would think he was doing a good
23 job. And I would say yes, he's a good deputy.

1 Q. Do you know anything about him that would cause
2 you to think he's not an honest guy or a good
3 deputy?

4 A. No.

5 Q. How long have you known him?

6 A. From whenever he started probably working at the
7 sheriff's office through work related. I would
8 most likely only see him probably at the stadium
9 when we worked together on patrol prior to his --
10 whatever special detail he went off to do. I may
11 have occasion to see him while working, but after
12 he was in his special detail then I did not -- I
13 couldn't say that I would have occasion to see
14 him hardly at all.

15 Q. Who is Bradford Ballantyne?

16 A. He's another sheriff's deputy.

17 Q. Is he a friend of yours?

18 A. I would have to say yes, as we previously
19 discussed.

20 Q. Have you ever talked to him on the cell phone?

21 A. I would have to say yes.

22 Q. Have you ever texted back and forth with him?

23 A. Over the twenty-some years that I've known him, I

1 would have to say yes.

2 Q. Have you ever socialized with him outside of
3 work?

4 A. Yes.

5 Q. How often?

6 A. I would say on a few occasions.

7 Q. Were both Ballantyne and Day present at the Bills
8 stadium on December 3rd, 2017?

9 A. I believe they were, yes.

10 Q. Do you know if Ballantyne or Day were wearing
11 body cameras at the Bills stadium on December 3rd
12 of '17?

13 A. I am not aware. I don't know.

14 Q. If I told you that Ballantyne was wearing a body
15 camera on 12/3 of '17 at the Bills stadium, would
16 you have a reason to disagree with that?

17 A. No.

18 Q. Have you ever seen Ballantyne's body cam footage
19 from 12/3 of '17?

20 A. I'm not certain. I'm not sure what -- I don't
21 believe so.

22 Q. Were you aware for any reason that Ballantyne's
23 body camera recorded him saying uh-oh, Kenny is

1 over there pushing someone?

2 A. I'm not aware, no.

3 Q. Were you aware that Mr. Day responded to Mr.
4 Ballantyne by saying Kenny always pushes people?

5 A. I'm not aware of that, no.

6 Q. Do you recall seeing an article on the front page
7 of the Buffalo News that was titled Kenny Always
8 Pushes People?

9 A. I really don't pay much attention to the Buffalo
10 News since December, whatever date that was, of
11 2018.

12 Q. So is your answer you do not recall that article?

13 A. I do not recall the article nor do I know of an
14 article that I've seen.

15 Q. Have you ever discussed the conversation that I'm
16 asking you about with either Mr. Day or Mr.
17 Ballantyne?

18 A. Not that I recall, no.

19 Q. Who is William Granville?

20 A. Deputy Granville is a sheriff's deputy that I had
21 mentioned earlier.

22 Q. Is he a friend of yours?

23 A. I would say yes.

1 Q. Do you socialize with him?

2 A. No.

3 Q. Have you ever texted with Deputy Granville or
4 spoken to him on your cell phone?

5 A. I'm sure across the many years of employment I
6 have spoken with him and then texted him.

7 Q. Were you aware that Granville was present for the
8 conversation between Ballantyne and Day?

9 A. I was not.

10 Q. Were you aware that Granville participated in the
11 conversation?

12 A. I was not.

13 Q. Have you ever heard what Granville said during
14 the course of that conversation?

15 A. I did not.

16 Q. If I told you that Granville said that, quote,
17 Kenny turned into Kenny, unquote, what would you
18 take that to mean?

19 MR. D'AQUINO: Objection. How can he possibly say
20 what somebody else means? You know that's not a
21 fair question.

22 MR. GLAZER: It's his friend. Are you directing him
23 not to answer it?

1 MR. D'AQUINO: Well, sure. You're literally asking
2 him what did someone else mean by what they said.
3 He's not clairvoyant. How would he know?

4 MR. GLAZER: His friend who he socializes with said
5 Kenny turned into Kenny. And I'm asking him if
6 he has any -- he can say no. I'm asking him if
7 he has any idea what that means.

8 BY MR. GLAZER:

9 Q. Kenny turned into Kenny, what does it mean?

10 MR. D'AQUINO: I'm going to object to the form. Go
11 ahead and answer.

12 BY MR. GLAZER:

13 Q. Do you know what he meant?

14 A. I do not know what he meant.

15 Q. If I told you that Granville said that Kenny
16 turned into Kenny means the fucking nightstick
17 comes out, close quote, would you have a reason
18 to disagree with that?

19 A. I don't know what he said, so I am not
20 disagreeing with what you said. I have not heard
21 that before.

22 Q. So if Granville said Kenny turning into Kenny
23 means the fucking nightstick comes out, you

1 wouldn't have a reason to disagree with that?

2 A. I don't know why it was said, but I'm not
3 disagreeing that you're saying it.

4 Q. Does it surprise you that your friend William
5 Granville said that about you?

6 A. I would say yes.

7 Q. Last couple questions. I appreciate your
8 patience.

9 We've established that you told Mr. Belsito
10 several times that his friend was going to 10
11 Delaware, is that correct?

12 A. Correct.

13 Q. Before your resignation, you worked for the Erie
14 County Sheriff Department for how long? Twenty --

15 A. Nineteen years.

16 Q. Okay. Have you been to the jail and the holding
17 center?

18 A. Yes, I have.

19 Q. Five hundred times, a thousand times, more than
20 that?

21 A. The only part of the holding center that I've
22 been to is to drop somebody off at the intake
23 booking area, and obviously that would be done

1 whenever a supervisor made that determination
2 that a person was going to the holding center.
3 And I don't have a number of how many times over
4 twenty years that that occurred.

5 Q. How many times over twenty years do you think you
6 walked in the front door of the holding center
7 and talked to somebody at the front desk?

8 A. I would say probably, if, maybe once.

9 Q. But you know you've been to the holding center a
10 variety of times and you drop people off there
11 all the time?

12 A. At the rear of the holding center, yes.

13 Q. Obviously you've seen the front of the holding
14 center, you've seen the front of the building,
15 you've parked your car there I assume at times?

16 A. No. My -- all the times that I went down to the
17 holding center, I came in from the rear, exited
18 to the side. And, you know, I don't recall
19 having an opportunity to park in front of the
20 holding center. It's restricted parking.

21 Q. But you've seen the front of the holding center
22 and you've walked in the front of the holding
23 center, is that fair?

1 A. Maybe once over twenty-some years, yes.

2 Q. I've got a picture of the holding center that's
3 going to have to get marked. It will be I think
4 12. Do you see the picture of the holding
5 center, at least the top of the sign, up on the
6 front of your screen there?

7 A. Yeah, I see that.

8 Q. Okay. If I scroll down a little bit, do you see
9 the big white letters and numbers that indicate
10 the address to the holding center?

11 A. Yes, I do.

12 Q. Can you tell me what the address is?

13 A. It says 40 Delaware.

14 Q. Okay. So the address of the Erie County Holding
15 Center in Buffalo is 40 Delaware Avenue?

16 A. Right.

17 Q. Not 10 Delaware, is that correct?

18 A. Correct.

19 Q. So after all this, you didn't even give the kid
20 the right address, did you?

21 MR. D'AQUINO: Object to the form. Ken, hold on.

22 You don't have to answer that question.

23 THE WITNESS: All right.

1 MR. D'AQUINO: It's argumentative.

2 MR. GLAZER: Well, that's not palpably improper and
3 that's not privileged, but --

4 MR. D'AQUINO: Well, you preface it with after all
5 this. So you're obviously making a point which
6 is by definition argumentative and by definition
7 not really a question.

8 MR. GLAZER: All right. Well, is it your position
9 that because it's argumentative, that you can
10 direct him not to answer it?

11 MR. D'AQUINO: It's my position that you should just
12 rephrase it. I think he already answered that 40
13 Delaware is not 10 Delaware.

14 BY MR. GLAZER:

15 Q. So you gave Nick Belsito the wrong address, is
16 that correct?

17 A. I mis -- I mis -- at that point in time I
18 mistakenly took the sheriff headquarters address
19 as 10 Delaware and gave him that answer, yes.

20 Q. So we know you made at least one mistake on 12/3
21 of '17, is that fair?

22 A. In regards to the address? Yes.

23 MR. GLAZER: I have nothing further and I appreciate

1 your time.

2 MR. BLOOM: Excuse me. Aaron, can I please speak to
3 you, this is Kevin Bloom, prior to you resting?

4 MR. GLAZER: Yes. Give me one second.

5 THE VIDEOGRAPHER: It is six-forty p.m. We are going
6 off the record.

7 (Whereupon, a short recess was then taken.)

8 THE VIDEOGRAPHER: It is six-forty-two p.m. We are
9 back on the record.

10 BY MR. GLAZER:

11 Q. We will be two minutes.

12 Mr. Achtyl, why did you state to Mr. Belsito
13 come here, when you were in the patrol car?

14 A. To eject him. He was either going to be arrested
15 or ejected. I thought I stated that earlier.

16 Q. Did you ask him to come here because he told you
17 do your fucking job or something like that?

18 A. Under the set of the circumstances involving
19 everything that transpired with him that day,
20 part of my decision at that point in time was to
21 eject him, and that added to the idea of getting
22 him off of the property and stadium area of the
23 Buffalo Bills.

1 Q. Why did you get out of your car?

2 MR. D'AQUINO: You've asked him that question and he
3 answered.

4 MR. GLAZER: Okay. Well, asked and answered is not a
5 proper objection.

6 BY MR. GLAZER:

7 Q. So why did you get out of the car?

8 MR. D'AQUINO: We're going on the seventh hour of
9 this deposition and you're asking the same
10 question we went over for probably half an hour?

11 MR. GLAZER: All right. Well, I have three questions
12 left. So we can try to call the judge or you can
13 answer the last three questions.

14 MR. D'AQUINO: Well, you know we can't call the judge
15 at six-forty-three p.m. And I guess the proper
16 thing to do is go back in the transcript and find
17 where you asked him that repeatedly and he
18 answered it. But why are you asking that again?

19 MR. GLAZER: I'm asking that for reasons that are my
20 own business, but I'm just telling you that we
21 have three questions left. And if he's answered
22 them already, it should be really easy. So you
23 can let him do it or not. And if you don't want

1 to let him do it, that's fine, we'll just --

2 MR. D'AQUINO: Well, I'm not clear on what's
3 happening here. You said you had no more
4 questions, the videographer (sic) then asked to
5 speak with you, you muted your line, and then you
6 came back on and said I have five more questions.
7 And the current one is one you asked already.

8 MR. GLAZER: Well, not that I have to give you this
9 information, but I am not the only attorney that
10 represents Mr. Belsito. Only one attorney can
11 ask questions and only one attorney can object on
12 behalf of one party. So I spoke to another
13 attorney, and now I have three more questions.
14 That's all the information that I was not
15 obligated to give you but that I have given you.
16 So I'm going to ask the questions or just direct
17 him not to answer.

18 MR. D'AQUINO: All right. I'm objecting asked and
19 answered to your first of the last three
20 questions you have.

21 BY MR. GLAZER:

22 Q. Okay. Why did you get out of the car, Mr.
23 Achtyl?

1 A. As I stated earlier, it was -- at that point in
2 time there was either going to be an ejection or
3 an arrest.

4 MR. GLAZER: Okay. I'm not going to ask any more
5 questions. That's it. I'm done. I appreciate
6 you answering that last question. I am done
7 officially.

8 MR. D'AQUINO: Okay. Sue Ann, anything we've got to
9 say to wrap this up or are we done?

10 THE VIDEOGRAPHER: It is six-forty-five p.m. and we
11 are going off the record.

12

13 (A Photograph was received and marked as
14 Exhibit 12, for identification.)

15

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1 I HEREBY CERTIFY that I have read the
2 foregoing 296 pages and that, except as to those
3 changes set forth in the attached errata form(s),
4 they are a true and accurate transcript of the
5 testimony given by me in the above-entitled
6 action on April 14, 2021.

7
8
9
10 _____
11 KENNETH P. ACHTYL, JR.
12
13

14 Sworn to before me this

15
16 _____ day of _____ 2021.
17

18
19 _____
20 Notary Public.
21
22
23

1 STATE OF NEW YORK)

2 SS:

3 COUNTY OF ERIE)

4
5 I, Sue Ann Simonin, a Notary Public in and
6 for the State of New York, County of Erie, DO
7 HEREBY CERTIFY that the testimony of KENNETH P.
8 ACHTYL, JR. was taken down by me in a verbatim
9 manner by means of Machine Shorthand, on April
10 14, 2021. That the testimony was then reduced
11 into writing under my direction. That the
12 testimony was taken to be used in the
13 above-entitled action. That the said deponent,
14 before examination, was duly sworn by me to
15 testify to the truth, the whole truth and nothing
16 but the truth, relative to said action.

17 I further CERTIFY that the above-described
18 transcript constitutes a true and accurate and
19 complete transcript of the testimony.
20

21 -----
22 SUE ANN SIMONIN,
23 Notary Public.

Kenneth P. Achtyl, Jr.

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